DOCUMENT RESUME

ED 289 416 HE 020 977

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| TITLE | Agreement between South Dakota Board of Regents and Council of Higher Education, an Affiliate of the South Dakota Education Association and the National Education Association, May 22, 1987. |
| INSTITUTION | National Education Association, Washington, D.C.; South Dakota Board of Regents, Pierre. |
| PUB DATE | 22 May 87 |
| NOTE | 134p. |
| PUB TYPE | Legal/Legislative/Regulatory Materials (090) -- Tests/Evaluation Instruments (160) |
| EDRS PRICE | MF01/PC06 Plus Postage. |
| DESCRIPTORS | Academic Rank (Professional); Access to Information; Administrators; Arbitration; Codes of Ethics; *Collective Bargaining; *College Faculty; *Contracts; Discipline Policy; *Employment Practices; Equal Opportunities (Jobs); Evaluation Criteria; Faculty Workload; Fringe Benefits; Governance; Grievance Procedures; Higher Education; Leaves of Absence; Personnel Policy; Records (Forms); Teacher Employment Benefits; Teacher Placement; Teacher Salaries; Teacher Strikes; Tenure; Unions; Work Environment |
| IDENTIFIERS | Dues Checkoff; National Education Association; *NEA Contracts; *South Dakota Board of Regents |

ABSTRACT

The collective bargaining agreement between the South Dakota Board of Regents and the Council of Higher Education (COHE), an affiliate of the South Dakota Education Association and the National Education Association (NEA), is presented, covering the period July 1, 1987 through June 30, 1988. It sets forth the conditions of employment for all faculty (in both higher education institutions and special regental schools) represented by the Council of Higher Education. Division I of the agreement, which provides general provisions for all institutions, covers the following: definitions, recognition, management rights, COHE status, nondiscrimination, civil rights, affirmative action, contract disputes (including faculty grievances), evaluation, transfer, assignment and reassignment, faculty unit member reduction procedures, academic freedom, code of conduct for discipline, personnel files, academic governance, unit member responsibilities, working conditions, leaves, fringe benefits, salary, legislative action, agreement management provisions, dues deduction, and effect, duration and renegotiation. Division II and Division III contain the provisions for higher education and special schools and cover the following: individual contracts; evaluation; tenure; transfer, assignment and reassignment; faculty unit member reduction procedures; member responsibilities; working conditions; leaves; and salary. Division II also covers rank and promotion, and Division III also covers academic governance. Seventeen appendices contain grievance forms, code of professional conduct, evaluation forms, authorization forms, salary distribution plans, etc. (LB)

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# AGREEMENT BETWEEN

# SOUTH DAKOTA BOARD OF REGENTS

# AND

# COUNCIL OF HIGHER EDUCATION

## AN AFFILIATE OF THE SOUTH DAKOTA EDUCATION ASSOCIATION AND THE NATIONAL EDUCATION ASSOCIATION

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**May 22, 1987**

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## AGREEMENT

This agreement is made by and between the South Dakota Board of Regents and the Council of Higher Education (an affiliate of the South Dakota Education Association and the National Education Association). This document sets forth the parties' agreement on rates of pay, wages, hours of employment and other conditions of employment for all faculty represented by the Council of Higher Education.

## CONTRACT FORMAT

Recognizing that the bargaining unit embraces the employees both in the higher education institutions, as well as the special schools under the regental system, the format of the agreement is divided into three divisions:

Division I - General Provisions - All Institutions

Division II - Special Provisions - Higher Education

Division III - Special Provisions - Special Schools

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## DIVISION I

## GENERAL PROVISIONS

I. DEFINITIONS - For the purpose of this agreement:

1.1 "Academic governance" will mean all senates, academic councils, or similar entities at system institutions, as presently constituted or subsequently modified and approved by the faculty, recommended to the board and approved by the board.

1.2 "Administration" or "administrator" will mean non-bargaining unit personnel employed at the institutions and the executive office of the board who have supervisory or managerial responsibilities.

1.3 "Day" means calendar day, unless otherwise indicated.

1.4 "Department" or "division" means the smallest grouping of disciplines which are administratively organized.

1.5 "Executive director" will mean the executive director of the board as established by SDCL 13-49-10, or designee.

1.6 Wherever in this agreement reference is made to "department head," the same shall be deemed to also include any immediate supervisor designated by the president to serve for, or in the stead of, such department head. For an extension program, a faculty unit member's immediate supervisor shall be their respective program leader.

1.7 "Faculty unit member" will mean an employee of the Board included in the collective bargaining unit as defined in Appendix A.

1.8 Gender - any reference to gender will be all inclusive.

1.9 Number - the singular includes the plural.

1.10 "Policy manual" will mean the compilation of rules, regulations and policies of the board.

1.11 "Working days" will mean those days when the offices of the institution or board are open for business.

1.12 "Will" is a verb having the mandatory sense of "shall" or "must." It is a word of certainty, while the word "may" is one allowing discretion.

1.13 "Board" will mean the South Dakota Board of Regents.

1.14 "COHE" will mean the Council of Higher Education.

## II. RECOGNITION

### 2.1 RECOGNITION STATEMENT

The board recognizes COHE as the exclusive representative of the collective bargaining unit, as determined by the Division of Labor and Management Document No. 12E 1976/77, dated the 11th day of August, 1978, or as may be modified by this agreement, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, grievance procedures and other conditions of employment. The bargaining unit composition is referenced in Appendix A.

### 2.2 MEMBERSHIP UNIT LISTS

The executive director will furnish COHE a list of names and residential addresses of bargaining unit members, compiled as of each October 1 and February 15. Lists will be forwarded by the executive director to the UniServ director of COHE on or before the 15th of the following month. The executive director and COHE will discuss any disputes of names included or not included, on the list, in order to resolve their status. In the event that the executive director and COHE cannot resolve a dispute regarding membership in the bargaining unit within forty (40) working days, the name(s) in the dispute will be submitted to the Division of Labor and management for determination of the status of the person(s) in dispute.

### 2.3 CHANGES IN UNIT MEMBERSHIP

Each institution will furnish the president of the local COHE chapter a list of changes in the bargaining unit membership at the institution within fifteen (15) working days of the date those changes are approved by the board.

### 2.4 EXCLUSIVITY

The board agrees not to recognize or negotiate with unit members or with organizations, other than COHE, claiming to represent the faculty unit on matters reserved to COHE by Division I, Section 2.1.

## III. MANAGEMENT RIGHTS

### 3.1 STATEMENT

Nothing in this agreement will derogate or remove any power, right or prerogative possessed by the board or its administrative staff except where such power, right or prerogative is legally and specifically limited by this agreement.

### 3.2 SPECIFIC MANAGEMENT PREROGATIVES

These management rights include but are not limited to the following:

1. To utilize personnel, methods, and means in the most appropriate and efficient manner possible.

2. To manage and direct the employees of the board.

3. To hire, promote, transfer, assign, retain or retire employees in positions under the jurisdiction of the board.

4. To establish reasonable work rules of conduct.

5. To suspend, demote, discharge or take other appropriate disciplinary action against employees for just cause.

6. To determine the sizes and composition of the institutions under its control and to lay off faculty unit employees in the event of lack of funds or under conditions where the board believes that continuation of programs would be inefficient or nonproductive.

7. To interpret the mission of each institution and the methods and means necessary to efficiently fulfill that mission, including the contracting out for or the transfer, alteration, curtailment or discontinuance of any services.

8. To allocate and distribute at its discretion any funds allocated and appropriated for discretionary distribution purposes within the following guidelines:

   a. Teaching abilities;

   b. Research and scholarly activities;

   c. Demonstrated performance of items a. and b. above;

   d. Market adjustment considerations;

   e. Experience in duties and responsibilities assigned;

f. Community and other public service;

g. Educational levels;

h. Addressing inequities.

3.3 LIMITATIONS

The exercise of management rights shall not be used for the purpose of undermining COHE or discriminating against any employee.

3.4 INCORPORATION BY REFERENCE

It is acknowledged by the parties to this agreement that there are statutes, regulations and board policies that are, and have been, operative in the administration of the rights, entitlements and responsibilities hereunder, i.e., insurance, travel, judicial or administrative redress, etc. and that such enactments, promulgations and adoptions are subject to change and repeal. To the extent such changes or repeals may occur during the term of this agreement, the results are deemed to be part of this agreement to the extent they are not inconsistent with the specific provisions of this agreement.

3.5 GENERAL BENEFITS

Benefits provided by applicable laws, executive orders and regulations will not be denied because of exclusion from this agreement.

## IV. COHE STATUS

### 4.1 MEETING FACILITIES

Upon request to the president or superintendent, COHE meetings will be permitted at the institution without charge, if appropriate facilities are available. If special services are required, a charge may be made for such service.

### 4.2 BULLETIN BOARDS

COHE may post notices on a shared basis with campus groups on existing bulletin boards customarily used for general notices to the faculty. If prior approval of notices appearing on these bulletin boards is needed, this prior approval must also be obtained for COHE notices.

### 4.3 CAMPUS MAIL RIGHTS

COHE may use the intra-campus mail service. Special mail service fees will be charged for such services used by COHE at each institution on the same basis as any other recognized institutional organization.

### 4.4 CAMPUS NEWSLETTERS

COHE may place an announcement in the institutional faculty newsletter, when published, stating the date, time, place and agenda of any COHE meeting. The format of the announcement will be determined in accordance with regular editorial policy.

### 4.5 BOARD MEETINGS AND ACCESS TO INFORMATION

The president and UniServ director of COHE each will be supplied a copy of the agenda of the regular board meetings by the executive director at the same time as copies are supplied to the institutions. If the agenda supplied does not include all public reports and recommendations, they will be made available at the meeting. One (1) copy of the minutes of the meeting will be furnished to the UniServ director of COHE. COHE may request to be placed on the tentative agenda and heard by any committee or the board at a regularly scheduled meeting, provided that such request and the content to be discussed is made known to the executive director ten (10) working days prior to the meeting.

Upon request of COHE, the executive director will, within ten (10) working days, make available one (1) copy of any public document published by the board or an institution.

4.6 COHE BUSINESS

Authorized representatives of COHE will be permitted to transact official business on institutional property provided that this will not interfere with or interrupt normal institutional operations or other institutional personnel in the performance of their duties, or conflict with other articles of this agreement. No faculty unit member will knowingly engage in COHE activities or the preparation of litigation or grievances against the institution or the board during the time for performing scheduled teaching or other assigned institutional duties.

4.7 COHE LEADERSHIP LEAVE

The statewide officers of COHE or SDEA/NEA may be given time off for the purpose of serving a leadership capacity, subject to the following provisions:

1. That the request for time off be approved by the member's immediate supervisor. The president or superintendent may deny such leave if it will significantly detract from the normal operations of the institution. If any such request is denied, the reasons for such denial will be stated in writing.

2. That the request for time off be submitted to the president or superintendent no fewer than thirty (30) calendar days prior to the beginning of the semester for which the time off is applicable.

3. That COHE reimburse the unit member's institution for the amount of salary, fringe benefits and other direct costs corresponding to the time off.

COHE members granted such leave will receive credit towards salary and fringe benefit increases as if they were not on leave.

4.8 COHE RESPONSIBILITIES

Should the board charge that a member or members of the bargaining unit are engaged in illegal activities as per SDCL 3-18, they shall so notify the COHE director by registered mail. COHE shall immediately, by registered letter, so notify such member or members of the receipt of the board charge and shall advise such member or members that that their actions are governed by SDCL 3-18. If it shall be objectively established that such board charges have substance, COHE shall notify in writing such member or members of its opinion. Copies of such correspondence shall be forwarded to the board's executive director.

## V. NONDISCRIMINATION, CIVIL RIGHTS AND AFFIRMATIVE ACTION

### 5.1 STATEMENT

The parties reaffirm their commitment to the objectives of affirmative action, equal opportunity and nondiscrimination in accordance with state and federal law. Redress for alleged violations of those laws by either party may be pursued at law or through the procedures established by the provisions of Division I, Article VI, of this agreement. Further, the parties recognize that plenary jurisdiction for enforcement of civil rights and anti-discrimination laws is vested solely in the various state and federal agencies and the courts. Therefore, the parties agree that it is desirable that civil rights and discrimination grievances should first be pursued through the grievance machinery set forth in Division I, Article VI. Nothing herein contained should be construed to preclude the right of any faculty unit member to pursue those remedies provided by SDCL Chapter 3-18.

In those cases where the grievance claimed shall sound, in whole or in part, in discriminating conduct violative of state or federal law, the institutional president or superintendent will incorporate the Discrimination Appeal Procedure (8/7) of the board's policy manual as a part of the Step 2 process under the provisions of Division I, Article VI, Contract Disputes. In such an event, the time constraints shall be revised to accommodate the new layer of procedure on the discrimination issues and the remaining issues shall either proceed to resolution or be held in abeyance pending the outcome and resolution fo the discrimination issues.

### 5.2 RESORTING TO OTHER PROCEDURES

If any faculty unit member should seek resolution of any civil rights claim in any forum or by any set of procedures other than those established under Division I, Article VI, of this agreement, whether administrative or judicial, the institution or board will be under no obligation to proceed any further with the matter unless the grievant is under an obligation to exhaust administrative remedies in order to bring such other action. The act of filing an action or claim in any other forum in order to avoid violating a time limitation will not be considered a violation of the intent of this section.

## VI. CONTRACT DISPUTES

### PART A - FACULTY GRIEVANCE RIGHTS

**6.1 PURPOSE**

The parties agree that all problems should be resolved, whenever possible, before the filing of a grievance. They encourage open communication between administrators and faculty unit members so that resorting to the formal grievance procedure will not be necessary. The purpose of this article is to promote prompt and efficient procedures for investigating and resolving grievances.

**6.2 GRIEVANCE RIGHTS**

Any individual faculty unit member or group of faculty unit members shall have the right at any time to present and have grievances adjusted. Where the grievance is processed by an individual faculty unit member or a group of faculty unit members, they may process the grievance without the intervention of the COHE representative, as long as the adjustment is not inconsistent with the terms of this agreement or any settlement between COHE and the board, and provided that the COHE representative has been given an opportunity to be present at such adjustment. It shall be the responsibility of the faculty unit member to provide COHE with a copy of any such grievance. The institution shall provide COHE with a written statement of any resolution.

**6.3 DEFINITIONS**

For the purpose of this article:

1. The term "grievance" will mean an alleged misinterpretation, misapplication or violation of a specific term or provision of this agreement. Any other grievances authorized by law, and which do not constitute a grievance under this definition, may be processed in the appropriate forum.

2. The term "grievant" will mean a named faculty unit member or a group of named faculty unit members, or COHE.

3. "Working days" as used herein will mean those days when the offices of the institution or board are open for business - Monday through Friday - exclusive of legal holidays. Working days shall not be counted under special circumstances where the unit member is unavailable to process his or her grievance by reason of travel or absence necessitated for continuing education, in special cases of emergency, during holiday or vacation periods when classes are not in session (in the case of 12-month faculty, during annual leave, or during a non-contract period), all excepting where a grievance has already been filed and where an extension of time has not been made the subject of a written agreement.

6.4 REPRESENTATION

Faculty unit members, in processing grievances, may represent themselves or be represented by someone of their choice. Beginning at Step 1, COHE and the administration will have the right to have an observer present at all meetings between the parties called for the purpose of discussing grievances. The president of the institutional COHE chapter will be informed in writing at least two (2) working days in advance of any such meeting. No resolution of any individually processed grievance will be inconsistent with the terms of this agreement.

6.5 CONFIDENTIALITY

The grievance proceedings will be maintained as confidential, subject only to the necessity of the parties to prepare their cases. All meetings and conferences will be held in a confidential setting.

6.6 TIME LIMITATIONS

When any action which is required to be taken within a specified time period is not taken in time, the following will apply:

1. If the grievant fails to act within the time limits provided herein, the administration will have no obligation to process the grievance and it will be deemed withdrawn.

2. In the case where the administration fails to act in time, the grievant may proceed to the next review level and any subsequently issued decision on the matter at the bypassed level will be void.

6.7 STEPS FOR PROCESSING A GRIEVANCE

1. Step 1

A grievant must first present a grievance, identified as such, in writing and informally, in accordance with the prescribed grievance form [Appendix B - Grievance Form - Step 1], at the lowest administrative level having authority to dispose of the grievance and with the COHE chapter president. The grievance must be filed within fifteen (15) working days of the date on which the grievant knew or should have known of the action or condition which occasioned the grievance. The administrator, upon learning of the grievance, will investigate the grievance as deemed appropriate and will respond to the grievant in writing within seven (7) working days; such investigation may include a private meeting with the grievant. Notwithstanding the foregoing, if the office of the president or superintendent represents the lowest administrative level having authority to dispose of the grievance, then

the grievance will be filed in the first instance at Step 2; in this circumstance, the applicable filing period remains fifteen (15) working days.

2. Step 2

If the grievance is not resolved in Step 1, the grievant will formalize the grievance in accordance with the prescribed grievance form [Appendix C - Grievance Form - Step 2] and file it with the president or superintendent of the institution and the local president of COHE within five (5) working days of the Step 1 decision. This form requires the legal name of the grievant, a statement of the specific provision(s) of this agreement alleged to have been violated, the relief requested, and evidence that the grievant attempted an informal adjustment of the grievance, as required in Step 1.

If, at the time of the notice and filing of the Step 2 grievance form, as above provided, grievant shall elect to invoke the intervention or assistance of a standing peer faculty committee, designated and constituted by COHE at the time of the notice, grievant shall so note on the grievance form.

The president or superintendent, or their designees, will conduct an investigation, which may include the services of a non-unit investigative panel, all for the purpose of arriving at an ultimate decision on the merits. Based on the investigative results of such investigation, and the recommendations that may be generated by the investigative process employed, the president or superintendent shall prepare a proposed decision on the grievance.

In the proposed decision, under circumstances where all, or even a part of, the requested relief is to be denied grievant, the president or superintendent shall schedule a conference with the grievant, which shall be held no sooner than four (4) days after the proposed decision shall be delivered to the grievant or his office. At the time of the delivery of the proposed decision, grievant shall also receive all material and documentation generated by the investigative process employed. Further, the president of the local COHE chapter will be informed of the scheduled conference, as required in Division I, Section 6.5, and will further be given, at such time, a copy of the proposed decision.

At the time of the meeting and informal conference so scheduled, the grievant, a COHE representative, and a second representative designated by the administration, will attempt to reach a settlement. At the time of the conference, grievant shall be entitled to present his or

her position on the matter in issue, which may include investigative materials and recommendations of the peer faculty committee, if such was noticed as above provided. If no settlement is reached at the conference, the president or superintendent will proceed to issue a decision which will be issued, and the grievant notified, within twenty (20) working days after the grievance was filed at Step 2. The decision will include a statement of the findings and conclusions supporting the decision.

Except as otherwise agreed, all meetings in regard to Step 2 grievances will be held on the campus where the grievance occurs.

3. Step 3

If a grievance has not been resolved in Step 2, the grievant may submit the grievance to the board on the prescribed form [Appendix D - Grievance Form - Step 3]. The Step 3 form will be filed with the executive director within ten (10) working days following receipt of the Step 2 decision. A copy of the Step 3 form will be sent by the grievant to the president or superintendent of the institution and the COHE chapter president.

The executive director will have fifteen (15) working days within which to attempt, at his discretion, a resolution through informal means.

If no resolution is achieved within the time herein last provided, the formal grievance shall be referred to a hearing examiner who shall be designated by the board and who, within ten (10) days after his designation and appointment, shall set the matter down for full hearing to be held no earlier than seven (7) days and no later than fifteen (15) days after his notice of appointment has been postmarked to COHE.

Such hearing shall be conducted in a confidential setting and all parties to the grievance will make no public statements about the case during the pendency of the proceedings. Both COHE and board representatives are entitled to be present at the hearing.

All parties to the grievance have the right to obtain witnesses and present evidence. The institution(s) will cooperate with the hearing examiner in securing witnesses and in making available specifically identified and relevant documentary and other evidence requested by the grievant(s), to the extent not limited by contract or law. Faculty unit members will respond to requests

to give testimony under oath, incidental to the processing of any grievance under this article. The parties to the grievance have the right to cross-examine witnesses. Where a witness cannot or will not appear, but the hearing examiner determines that the interest of justice requires admission of their statement, then the hearing examiner will arrange for a deposition. The hearing examiner may grant continuances when requested by either party to enable either party to investigate evidence, or for any other reason deemed appropriate. The hearing examiner will keep a record of the proceedings.

The hearing will not be conducted under strict rules of legal evidence and is not a contested case. Every possible effort will be made to obtain the most reliable evidence.

The hearing examiner will make a recommendation to the board which will take the form of findings, conclusions and an order of disposition and will be issued within fifteen (15) working days of the hearing or of the expiration of any briefing schedule established by the hearing examiner. A copy of the recommendation will be provided to COHE, the grievant(s) and the president or superintendent. The recommendation must be based solely on the record, pertinent institutional and board policies, this agreement and the law of the land. Whenever the recommendation reverses or modifies the Step 2 decision, it must be accompanied by a statement of reasons and referred along with the record, to the central office of the board.

The board will make a final decision based upon the recommendation of the hearing examiner. In addition, it may review the record pertinent to the issues. Such decision will be made at the next regularly scheduled board meeting following receipt of the recommendation, provided the recommendation is received ten (10) working days prior to the board meeting. If not received in time, the recommendation will be acted upon at the subsequent meeting. COHE shall be allowed an opportunity to discuss the grievance with the executive director of the board prior to a final decision. If the board rejects or modifies the recommendation of the hearing examiner, the Board will provide COHE and the grievant with the reasons for rejecting or modifying the recommendation. Appeals from the decision of the board will be governed by SDCL 3-18-15.2, and other laws in such cases made and provided.

6.8 MISCELLANEOUS PROVISIONS

1. No offer of settlement of a grievance by either party to the grievance will be admissible as evidence in later

grievance proceedings, or elsewhere. No settlement of a grievance will constitute a binding precedent in the settlement of similar grievances, unless otherwise agreed.

2. If the grievance concerns nonrenewal, denial of promotion, or denial of tenure, the grievance review will be limited to determining whether the decision was the result of failure to follow procedures, unless otherwise provided in this agreement. The burden of proof, in such cases, shall rest with the grievant.

3. Neither COHE nor the board will retaliate or effect reprisals against any faculty unit member for processing or participating in a grievance.

4. In the event a grievance is filed near the end of an academic year and strict adherence to time limits will result in hardship to any party, the parties will do everything reasonable to allow the grievance to be processed in an expeditious manner.

5. Grievance records will not be maintained in any faculty unit member's institutional personnel file.

6. The parties to the grievance may, in their discretion, waive any of the time limitations provided for herein; provided, however, that such waiver must be in writing and signed by both parties involved at the particular level or step of the grievance machinery.

7. In the case of a grievance concerning a discipline or a termination pursuant to Division I, Article IX, Faculty Unit Member Reduction Procedures, the burden of proof will rest upon the administration to the extent required by law. In all other cases, the burden of proof will rest upon the grievant.

8. Each party to the grievance will bear their own expense in a grievance proceeding. The institution or the board will bear the expense of providing the hearing examiner and all attendant costs thereto.

9. A grievant shall be permitted at any time prior to the time the hearing examiner sets the matter down for hearing, by written notice, to amend a grievance by further specifications. However, the filing of such amendments will not act to extend any time constraints.

## PART B - DECLARATORY RESOLUTIONS

### 6.9 CONTRACT CONSTRUCTION AND PROCEDURAL STEPS

In any case where COHE or the administration of an institution disputes the interpretation, application or contract compliance with

this agreement, either party may notify the other in the form of a demand for a conference resolution of the disputed issues. Such conference shall be scheduled and held within fifteen (15) days of the notice. If the dispute involves primarily one institution, the conference shall be held on the campus of the involved institution. If no accord or resolution is reached within the fifteen (15) days after the conference, or if either party shall refuse to attend such a conference, either party shall be privileged to serve upon the other a notice of irreconcilability. Within ten (10) days thereafter, the parties serving the notice shall be entitled to seek the intervention of the executive director and the issue shall be processed in the same manner and with the same effect as provided for in Part A under the Step 3 procedures at the executive director level and all procedures that follow thereafter. Nothing herein provided by this section shall preclude individual faculty unit members from processing their individual grievances under Part A.

VII. EVALUATION (See also Division II, Article II; and Division III, Article II)

7.1 GENERAL PROVISIONS

Faculty unit member evaluation is a joint concern of the faculty and the administration. The purpose of the evaluation will be to:

1. Promote positive communication between faculty and administration.

2. Increase awareness of institutional program objectives and needs.

3. Provide information for decisions on professional training, staff improvement programs and those conditions which promote quality performance.

4. Provide information for personnel decisions such as discipline, contract renewal, salary and pay matters, tenure, and promotion.

The administration will be responsible for implementation of the procedure and the evaluation process.

VIII. TRANSFER, ASSIGNMENT AND REASSIGNMENT (See also Division II, Article V; and Division III, Article III)

8.1 GENERAL PROVISIONS

Intra-institutional transfers are defined as those transfers wherein a faculty unit member within an institution transfers to another department, school or faculty position within the same institution. An applicant from within the same institution will be selected for the position over other applicants provided that the faculty unit member's qualifications as related to the job description are equal to or better than those of any other applicant.

Inter-institutional transfers are defined as those transfers wherein a faculty unit member from one institution under the governance of the board transfers to another such institution. Inter-institutional applicants will be selected over outside applicants providing that their qualifications as related to the job description are equal to or better than those of any outside applicant.

The accrued rights of faculty unit members will be maintained in those cases involving involuntary transfers of faculty unit members that have resulted from geographical relocation of programs. The board will provide moving expenses in the case of such transfers as provided by state rules and regulations.

## IX. FACULTY UNIT MEMBER REDUCTION PROCEDURES (See also Division II, Article VI; and Division III, Article IV)

### 9.1 GENERAL PROVISIONS

If it becomes necessary to terminate the contractual rights of faculty unit members because of governmental action, significant loss of enrollment, consolidation of departments, or other reorganization, dropping of courses, programs, or activities, or financial exigency, the board may, notwithstanding any other provision of this agreement, terminate the appointments of faculty unit members in accordance with the provisions of this agreement.

The president or superintendent of the institution will notify any individual faculty unit member of termination and provide the local president of COHE or the Uniserv director of COHE the reasons for the reduction and the faculty unit members to be affected under the proposal, in order for COHE to have the opportunity to respond. Such response will be within ten (10) working days of the president's or superintendent's notice. Upon request of COHE, the president or superintendent will schedule a meeting to discuss the response. An effort will be made to provide notice of intent to utilize the provisions of this article, as soon as practicable.

In addition to the rights afforded a faculty unit member under the provisions of Division I, Article VI, Contract Disputes, of this agreement, wherein the burden of proof will rest upon the board, every faculty unit member whose contract will be significantly modified, terminated, not renewed, lengthened or shortened, shall be afforded, on written notice to the board to be mailed no later than fifteen (15) days from the administration's notice of intention, an opportunity for a due process hearing before the board in executive session. Such hearing shall be held at the next scheduled monthly meeting of the board following the running of the fifteen (15) day notice period, or at a special meeting to be scheduled, noticed and held no earlier than fifteen (15) days following the administration's notice of intended reduction as above provided.

### 9.2 FEDERAL FUNDING - SPECIAL CONDITIONS

A faculty unit member who is terminated in accordance with this article, and whose salary was fully supported by federal funds, will have no priority of employment over faculty unit members in positions supported by state funding sources, unless such faculty unit member was previously employed in a state funded position. In the latter case the faculty unit member will be treated in accordance with the guidelines provided in this article.

### 9.3 FURTHER PROVISIONS

A faculty unit member terminated pursuant to the provisions of this article may institute a grievance under Division I, Article VI, Contract Disputes, and the burden of proof will rest with the administration to the extent required by law.

## X. ACADEMIC FREEDOM

### 10.1 STATEMENT

The parties agree and declare that academic freedom will be guaranteed to faculty unit members subject only to accepted standards of professional responsibility including, but not limited to, those herein set forth:

1. The parties to this agreement recognize and accept the importance of academic freedom to teaching and learning. Academic freedom includes the right to study, discuss, investigate, teach and publish. Academic freedom applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of students to freedom in learning. It includes the freedom to perform one's professional duties and to present differing and sometimes controversial points of view, free from reprisal. The faculty unit member is entitled to freedom in research and in the publication of the results, subject to the performing of other assigned academic duties.

2. Faculty unit members are entitled to freedom in the discussion and presentation of their subject and shall be privileged to introduce various scholarly views. Further, they shall have the freedom to provide counsel and recommendation in the administration's determination of class size and matters of classroom space.

3. The concept of freedom should be accompanied by an equally demanding concept of responsibility. The faculty unit members are members of a learned profession. When they speak or write as citizens, they must be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As learned people and as educators, they should remember that the public may judge their profession and their institution by their utterances. Hence, they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should indicate that they are not speaking for the institution.

This provision is intended to guarantee those rights which are recognized as flowing from the first amendment of the United States Constitution.

## XI. CODE OF CONDUCT - DISCIPLINE - JUST CAUSE

### 11.1 PREAMBLE

The credibility and effectiveness of higher education faculty institutions are derived from the high standards of conduct and integrity demonstrated by those who generate, refine, and transmit knowledge. To protect and maintain the status of the profession, criteria and procedures for just cause actions are needed to provide for the rare occasions when established standards of conduct are violated. Just cause requires quick and efficient action when the standards and reputation of institutions and their faculties are jeopardized; it also requires meticulous due process to protect the rights of individuals and to guard against arbitrary and heedless actions. The burden of proof for any just cause action rests with the administration; any action is subject to the due process requirements specified in Division I, Articles VI and XI of this agreement.

### 11.2 ALTERNATIVE MEASURES

With full recognition for the foregoing, the board may discipline any faculty unit member for failure to comport their conduct to the Code of Professional Conduct set forth in Appendix E. Taking into consideration the nature of the conduct, past service, scholarly achievments and other mitigating circumstances, any departure or failure to abide by the Code of Professional Conduct, as herein referenced and attached, may result in any of the following alternative actions:

1. Warnings;
2. Warnings to be filed with the personnel file of the faculty person;
3. Required counseling or treatment at the cost of the faculty person;
4. Temporary suspension from duties with, or without, loss of pay commensurate therewith;
5. Reassignment;
6. Demotion;
7. Discharge.

### 11.3 PROCEDURES

Except in the case of all warnings, under subparagraph 1 above, if the administration has determined that probable cause for discipline shall exist, the faculty unit member will be furnished written notice of the allegation supporting the determination and the administration's intended disciplinary action. The matter will

be discussed with the faculty unit member with a personal conference which will be held at a time not sooner than ten (10) working days, nor later than fifteen (15) working days from the date of the transmission of the written notice, unless otherwise agreed by the faculty member and the administration. The faculty unit member may bring to this meeting a representative chosen by the faculty unit member. The administration, however, will not proceed with formal action discipline until the faculty unit member has, through delay or other clear expression, indicated the intention to waive the right to Division I, Article VI, Contract Disputes, or until the provisions of that article have been exhausted; whereupon formal discipline will be effective upon receipt of written notice by the faculty unit member. Any grievance appeal under this section will begin at Step 2. The grievance conference required at Step 2 must be held by the president or superintendent, or in the absence of the president or superintendent, the acting president or superintendent, and will not be designated to any other person.

Under subparagraphs 4 through 7, inclusive, the ultimate discipline to be meted out shall not be effective until approved and acted upon by the board.

The foregoing notwithstanding, the administration may suspend the faculty unit member, with pay, pending final action by the board to discharge, if the character of the charges and the nature of the conduct warrant such action.

In all cases, the burden to prove the charges will rest with the administration.

## XII. PERSONNEL FILES

### 12.1 STATEMENT

A single official personnel file will be maintained on each faculty unit member at a central location(s) designated by the president or superintendent; provided, however, that there will be two (2) such official files maintained on those faculty unit members with federal appointments by the Extension Service at South Dakota State University. Business records concerning each member of the unit may be maintained in the institutional business or personnel office. If working files are maintained by any administrators, all materials thus generated must be timely filed in the personnel file as a condition to its use in any adverse personnel decisions involving faculty unit members.

Beginning with the effective date of this agreement, items placed in a faculty unit member's personnel file will be signed and dated by the person placing the material in the file.

Faculty unit members will have access to their personnel and business record files, exclusive of confidential pre-employment placement credentials, during normal business hours and may request copies, at their own cost, of material contained therein. If the file is not immediately available, it will be made available within one (1) working day. Faculty unit members may not remove their files from the room in which they are housed.

Faculty unit members may enter a statement in their file which they feel clarifies, corrects, or refutes material therein, and such statement will be attached to the applicable documents in the file. Faculty unit members may also place in their file materials relevant to academic qualifications, teaching, research, scholarship and service.

Access to faculty unit members' personnel files will be restricted to the faculty unit members, their authorized agents, or authorized administrators.

A log will be maintained which indicates the following:

1. Name of faculty unit member.
2. Date accessed.
3. Name of person accessing file.
4. Date returned to room in which file is housed.

Personnel files may be purged of any material which is obsolete, unfounded, is unnecessary or is otherwise inappropriate, under the following circumstances and procedures:

1. On written request by the faculty unit member to the administration, with assent by the administration as demonstrated by the return of either all, or a part, of such documents to the faculty unit member. Lacking administrative assent, the faculty unit member may initiate a grievance to remove the material on any of the bases stated above.

2. By action of the administration in purging such files, and forwarding such material to the faculty unit member. On receipt thereof, the faculty unit member shall return, by mail, those materials he prefers to have re-filed in his personnel file.

## XIII. ACADEMIC GOVERNANCE (See also Division III, Article V)

### 13.1 GENERAL STATEMENT

Academic governance at each institution will exercise all the rights, powers and prerogatives heretofore possessed, except to the extent that such rights, powers and prerogatives are in conflict with the rights, powers and prerogatives secured by COHE by this agreement.

XIV. UNIT MEMBER RESPONSIBILITIES (See also Division II, Article VII; and Division III, Article VI)

14.1 OUTSIDE EMPLOYMENT

The statutory provisions regarding dual employment are at SDCL 3-8-4 to 3-8-5.4. The board and the institution will not infringe upon a faculty unit member's privilege to engage in consulting or other employment outside the institution's regular day class schedule during the academic year, so long as the other employment does not adversely affect or conflict with the faculty unit member's performance of his primary responsibilities to the institution.

14.2 PROFESSIONAL TRAVEL

Travel expense incurred by faculty unit members in administratively authorized representation of the institution at federal, state agency, or other professional meetings will be fully reimbursed by the institution in accordance with state travel regulations. The administration will develop uniform procedures by which a faculty unit member may request travel funds for professional activities. Faculty unit members may submit concerns regarding travel procedures to the administration.

14.3 STUDENT DISCIPLINE

Student discipline is addressed in board policy manual and each institution will include the student discipline policy for the institution in the faculty handbook. It is the responsibilty of the administration to take appropriate steps to enforce the discipline policy(s) referenced above.

## XV. WORKING CONDITIONS (See also Division II, Article VIII; and Division III, Article VII)

### 15.1 SAFE WORKING CONDITIONS

The parties will comply with all applicable state and federal law relating to safe working conditions.

Whenever a faculty unit member becomes aware of a condition which the faculty unit member feels is a violation of an institutional safety or health rule or regulation, the faculty unit member will report such conditions to an appropriate administrator who will promptly investigate such conditions.

Protective devices and first aid equipment will be provided to faculty unit members who practice in a hazardous institutional environment and the faculty unit member will be responsible for the proper use of such devices.

### 15.2 TELEPHONE SERVICE

Each institution will provide access to telephone service for faculty unit members under the general guidelines that institutions at which needs are demonstrated will provide improved service and privacy of conversations with consideration given to budgetary constraints and departmental priorities.

### 15.3 CLERICAL ASSISTANCE AND INSTRUCTIONAL SUPPLIES

The parties recognize the desirability of professional clerical assistance and adequate instructional supplies. To the extent that financial resources permit, effort will be made to provide faculty unit members the clerical assistance and instructional supplies necessary for the fulfillment of their assigned responsibilities.

An effort will be made to assign work-study students equitably.

### 15.4 FACILITIES AND EQUIPMENT

The board shall make a reasonable effort to provide each faculty unit member with reasonably adequate facilities and equipment for effective performance.

XVI. LEAVES (See also Division II, Article IX; and Division III, Article VIII)

16.1 SICK LEAVE

Upon request, a faculty unit member may take sick leave with full compensation, in accordance with SDCL Chapter 3-6, for personal illness, pregnancy and related disabilities, adoption, exposure to contagious diseases that would endanger the health of fellow employees, eye and dental care, or medical examinations.

The institutions have the right to investigate the use of sick leave. If use of sick leave is found to be for other than the uses listed above, the time off will be charged to leave without pay, and may be cause for disciplinary action.

Advance sick leave may be granted, not to exceed 244 hours. Advance sick leave may be used only after the exhaustion of all regularly accumulated sick and annual leave. Advanced sick leave will be charged against all sick leave credits subsequently earned. Advanced sick leave must be repaid prior to leaving the employment of the institution. Advance sick leave may not be granted during the first year of employment. All advance sick leave must be approved by the president or superintendent.

16.2 PERSONAL EMERGENCY LEAVE

Faculty unit members are allowed to use forty (40) hours of accumulated sick leave during each calendar year for personal emergency. The use of sick leave for personal emergency may be granted due to a death in the immediate family (spouse, child, mother, father, mother-in-law, father-in-law, brother, sister, grandparent, grandchild, stepchildren or stepparents); emergency illness or scheduled surgery of a member of an immediate family; call to state active duty of military reserve or national guard members. If an emergency illness of a child does occur and both parents are faculty unit members, personal emergency leave may also be granted to both parents. Personal emergency leave may also be granted due to weather conditions which do not permit faculty unit members to reach their work site. Emergency leave for weather conditions must be approved by the institutional president or superintendent.

Use of personal emergency leave is not allowed for faculty unit members accompanying a family member to a scheduled medical appointment for routine medical services.

16.3 MILITARY LEAVE

Faculty unit members who are called to active duty in the military services are eligible to request a leave without pay during the length of the required service.

Faculty unit members who are members of Reserve or National Guard units are authorized up to fifteen (15) working days during a calendar year for required training. The faculty unit member does not lose pay or benefits during the training period.

16.4 JURY LEAVE

Faculty unit members who are summoned for jury duty will receive their regular compensation, and are authorized to accept the fees ordinarily paid to a juror. No charges will be made against accrued leave.

16.5 SABBATICAL, FACULTY UNIT MEMBER IMPROVEMENT AND CAREER REDIRECTION LEAVES

A faculty unit member may be granted sabbatical leave after six (6) or more consecutive years of full-time employment in the system. A faculty unit member may be granted faculty unit member improvement or career redirection leave after three (3) consecutive years of full-time employment in the system. Approval for such leave will be contingent upon the faculty unit member presenting plans for formal study, research, or other experiences which are designed to improve the quality of service of the faculty unit member to the institution, to the board and to the state of South Dakota.

The number of all faculty unit member improvement, career redirection or sabbatical leaves granted by an institution during any fiscal year will not exceed five percent (5%) of the faculty unit members or one (1) FTE, whichever is greater, in any one year.

Sabbatical leave for nine (9) month faculty unit members will be for not more than two (2) semesters at one-half the salary which would have been paid had the faculty unit member been on full-time employment, or not more than one (1) semester at the full salary which would have been paid had the faculty unit member been on full-time employment.

Sabbatical leave for twelve (12) month faculty unit members will be for not more than twelve (12) months at one-half the salary which would have been paid on full-time employment, or not more than six (6) consecutive months at the full salary which would have been paid on full-time employment.

Faculty unit member improvement or career redirection leave for nine (9) month faculty unit members will be for not more than two (2) semesters at eight percent (8%) of the salary which would have been paid on full-time employment, for each full academic year of consecutive full-time service, up to a maximum of fifty percent (50%) of salary, or not more than one (1) semester at sixteen percent (16%) of the salary which would have been paid on full-time employment, for each full academic year of consecutive full-time service, up to a maximum of one hundred percent (100%) of salary, for each year of consecutive service.

Faculty unit member improvement or career redirection leaves for twelve (12) month faculty unit members will be for not more than twelve (12) months at eight percent (8%) of the salary which would have been paid on full-time employment, for each full year of consecutive full-time service, up to a maximum of fifty percent (50%) of salary, or not more than six (6) consecutive months at sixteen percent (16%) of the salary which would have been paid on full-time employment, for each full year of consecutive service up to a maximum of one hundred percent (100%) of salary.

All faculty unit members receiving faculty unit member improvement, career redirection, or sabbatical leave are required to return to the institution granting the leave for at least two (2) academic years of full-time service, or to refund the full salary and institutional costs of fringe benefits received while on leave. If a faculty unit member returns, but fails to perform the full two (2) years return-to-service obligation, then the repayment obligation will be prorated. Any repayment obligation will be due in full one (1) calendar year after the end of the leave period or any subsequent, successive leave periods. Any repayment obligation which remains unpaid after falling due shall earn interest at an annual rate of eighteen percent (18%) compounded semi-annually. A faculty unit member who cannot perform return-to-service obligations due to a death or permanent and total disability, or reduction in force, will be released of all repayment obligations. Determination of whether a faculty unit member is to be considered disabled will be made by the board.

All faculty unit members, upon return from faculty unit member improvement, career redirection, or sabbatical leave will be returned to their former positions or be assigned to positions of like nature and status, and will be granted increment increases that were given during their leave. They may be considered for merit increases as if they had served at the institution during such period. They will maintain tenure, insurance benefits, accumulated sick leave, and all other accrued benefits. If the faculty unit member is on less than fifty percent (50%) compensation, service for retirement is not accumulated during the period of such leave. Nothing in this article will be construed to abrogate other provisions of this agreement which affect employment status.

The following criteria will be considered in selecting the candidates for faculty unit member improvement, career redirection or sabbatical leave:

1. The merit of the objectives as they relate to improving the instructional program and enhancing the professional growth of the applicant, and where other institutions are involved, evidence of acceptance of the faculty unit member's program or project by the institution offering the advanced study or research.

2. Years of experience in the system.

3. Previous leaves.

4. Distribution of applicants by academic area.

All grantees of faculty unit member improvement, career redirection or sabbatical leave will execute a promissory note with the board which is consistent with the terms of this article.

16.6 LEAVE OF ABSENCE WITHOUT PAY

Leave of absence without pay may be granted by the board for up to one (1) year for educational or other valid reasons. Exceptions and extensions may be granted by the board.

16.7 UNAUTHORIZED ABSENCE

A faculty unit member who is absent from assigned professional activities without authorized administrative approval may be subject to the provisions of Division I, Article XI, Code of Conduct - Discipline - Just Cause.

## XVII. FRINGE BENEFITS

### 17.1 STATEMENT OF BENEFITS

Subject to legislative prerogative and action, the following fringe benefits will remain in force and effect for the faculty unit members:

> Retirement (SDCL Ch. 3-12), Unemployment Insurance (SDCL Title 61), Worker's Compensation Insurance (SDCL Title 62), Long Term Disability Insurance (SDCL Ch. 3-12), and Personal Liability Indemnification (SDCL Sections 3-19-1 and 3-19-2).

The health and life insurance policies presently in effect for the faculty unit members will remain in force until and unless such policies are modified, changed, substituted or extended by legislative or executive action.

Liability coverages presently in force for faculty unit members, in addition to the liability coverages provided to COHE members by COHE, shall remain in force and in effect until and unless such policies or coverages are modified, changed, substituted or extended by executive action, or cancelled by the insurer. In the event of cancellation by the insurer, COHE and the board will put forth their best efforts to obtain substitute liability coverage for the faculty unit members and such coverages, insofar as is available, which will be comparable to the coverages afforded by the state-wide policy referenced above.

The UniServ director of COHE will be furnished a copy of any master policies for health, life and liability insurance.

### 17.2 GENERAL PROVISIONS

In the event the foregoing insurance coverages shall be changed by legislative or executive action, the parties agree to meet, at the written request of either, to renegotiate that portion of this article which is affected. Such negotiations will commence within thirty (30) working days of receipt of the request for renegotiation. During the period of negotiations, the policies and coverages established by the modification, change or extensions will go into effect at such times as are specified in the respective contracts of insurance shall so provide and existing policies and coverages are deemed amended accordingly.

### 17.3 STUDY COMMITTEE

A committee will be established to conduct an annual review of fringe benefits provided to faculty unit members and make recommendations to the executive director and COHE concerning fringe benefits. The committee will consist of two (2) faculty unit members appointed by COHE and two (2) administrators appointed by the board. Meetings of this committee will be scheduled by mutual agreement.

The committee will make its report to COHE and the board not later than October 15, and May 15 of each subsequent year.

17.4 EARLY RETIREMENT PROGRAM

The parties agree that any early retirement program which has been developed by the board should be made available to faculty unit members as soon as legislatively funded.

17.5 TUITION AND FEE WAIVER

Statutory privileges for waiver of tuition and fees, from time to time provided to all state employees, will be provided to the faculty unit members.

XVIII. SALARY PROVISIONS (See also Division II, Article X; and Division III, Article IX)

18.1 GENERAL PROVISIONS

The provisions of this article are contingent on the availability of funds authorized and appropriated by the legislature and the salary increase guidelines expressed in the legislative letter of intent. The board reserves the right to use discretionary funds for salary purposes.

18.2 SALARY ADJUSTMENTS

A joint COHE/BOR committee shall be formed for the purpose of identifying warranted salary adjustments among faculty unit members. Such committee shall be formed and shall operate under the following guidelines:

1. The committee shall consist of four (4) members; two (2) appointed by COHE and two (2) appointed by the board;

2. Expenses of members shall be the responsibility of the appointing parties.

3. The committee shall issue a report of a plan to obtain a statistical approach which identifies salary inequities and such report shall be provided to the executive director of the board and the director of COHE.

The report contemplated by the preceding paragraph shall be prepared, documented, and submitted at the earliest time as shall be permitted in the circumstances and complexities of the task. The board shall receive and review the report toward the end that the findings and recommendations received will be considered in conjunction with other factors used and established for faculty compensation. Unless and until released by the board, the report shall remain confidential.

In the distribution of discretionary salary monies, the board shall give priority to adjusting salaries of faculty who have been identified, or are otherwise identifiable, by the joint committee and approved by the board.

18.3 POLICIES, PRACTICES AND COMPENSATION - CONTINUING EDUCATION/ SUMMER SESSIONS

Committees consisting of two (2) faculty unit members appointed by the local chapter of COHE and two (2) administrators appointed by the president will be continued on each campus to review current policies and practices regarding summer sessions, continuing education and extension and make recommendations to their respective presidents, specifically noting any recommendations not unanimously agreed upon by the members of the committee. The student association on each campus may appoint a student observer to be

present at committee meetings. Plans and policies so developed shall be shared with corresponding committees at other institutions in an effort to develop uniformity with respect to policies on summer session and continuing education.

Modifications of locally agreed policies on any campus may be proposed by the president or local COHE chapter by November 1 to be resolved by the processes described above.

18.4 SALARY AND FRINGE BENEFIT FUNDING

Representatives of the board and COHE will meet prior to the June board meeting to hold preliminary discussions on salary and fringe benefits for a successor contract. It is the intent of the parties to attempt to reach such agreement as is necessary to cooperate in supporting legislation to fund salaries and fringe benefits.

## XIX. LEGISLATIVE ACTION

### 19.1 STATEMENT

Where a provision of this agreement requires legislative action, other than appropriations, for its implementation, COHE and the board agree to meet to discuss the drafting of such legislation, and its introduction into the legislative process. Where mutual agreement is reached on the proper form of the desired legislation, and the proper introduction of such legislation into the process, then the parties will lend their support to the passage of such legislation.

It is agreed by the parties that any provision of this agreement which requires legislative action to permit its implementation by enactment of a bill into law, or by appropriation of funds therefor, will not become effective until the necessary legislative action is obtained.

If the Legislature appropriates insufficient funds to properly implement any provision of this agreement which is dependent on such funding, said provision will be implemented to the extent of the funds appropriated. It is understood that if the inadequacy of funding affects both unit and non-unit personnel, that the funds appropriated will be prorated by the board between the unit and non-unit personnel, and only the amount allocated to the unit will be available for the implementation of the affected provision.

If the Legislature does not appropriate any funds to implement a provision of this agreement which is dependent on such funding, then said provision will not be placed into force.

The provisions of Division I, Article III, Section 3.2.8 do not obligate COHE to support legislation enacting merit pay.

## XX. AGREEMENT MANAGEMENT PROVISIONS

### 20.1 AGREEMENT MANAGEMENT

In order to facilitate the management of this agreement, the following agreement management committees are established.

### 20.2 INSTITUTIONAL AGREEMENT MANAGEMENT COMMITTEES

Each institution will establish an institutional agreement management committee (IAMCOM) made up of three (3) administrators, appointed by the institutional president, and three (3) faculty unit members appointed by the COHE chapter president, except at the special schools where the committees will be comprised of two (2) administrators who will be appointed by the superintendent and two (2) faculty unit members by the COHE chapter president. For each of such committees, the appointment authorities will designate one (1) of their appointees as co-chairperson. The co-chairpersons will be jointly responsible for establishing meetings and composing agenda. Such committees will meet at least once every ninety (90) calendar days unless otherwise agreed by the co-chairpersons.

The IAMCOMs are intended to be informal forums for identification and discussion of problems of interpretation of agreement language and agreement implementation and management. The committees are not authorized to modify, supplement or amend agreement language. Items of business will be placed upon the agenda of any meeting upon written request of any two (2) members.

The committee will report the subject and results of its deliberations to the board, COHE, the presidents, superintendents and other IAMCOMs.

The committee will not become involved in the grievance process or in negotiations, nor be obligated to reach agreement on any item of business considered.

### 20.3 TOTALITY OF AGREEMENT

All matters on which the parties have reached agreement are set forth in this document. All other understandings, representations, or agreements between the parties are of no force and effect.

During the duration of this agreement, the provisions hereof will supersede any previous or future regulations, practices, rules, policies or handbook provisions which may be in conflict with the express terms hereof. Any individual contract entered into between the board and a faculty unit member will be subject to the provisions of this agreement.

Guidelines for intra-institutional rights and responsibilities for a particular institution may be compiled in a handbook. Faculty

handbooks are neither intended, nor should be considered, as conferring any employment rights not provided for in this agreement and to the extent they may be so arguably interpreted, the same are void and of no effect.

20.4 PRINTING AND DISTRIBUTION OF AGREEMENT

The board and COHE will cooperate in preparing and printing this agreement. The board will prepare the master copy for printing. The galley proof for the printing of this agreement will be approved by the parties. The costs of production will be shared equally by both parties based upon a mutual agreement as to the price and number of copies to be printed. The board will be responsible for arranging for the printing of this agreement. COHE agrees to pay the board for its share of the printing costs within thirty (30) days of the date billed.

The board at the time of any new hire will be responsible for providing to the new faculty unit member a copy of this agreement from the above number of copies printed.

20.5 SEVERABILITY

If any word, phrase or provision of this agreement or any application thereof to any faculty unit member or the board is held to be contrary to law by a court of competent jurisdiction, such word, phrase, or provision or application will be deemed valid and subsisting only to the extent permitted by law and all other words, phrases, provisions and applications will be separated and continue in full force and effect.

20.6 WAIVER

Failure of either party to require performance by the other party of any promise, condition or covenant herein will in no way effect the full right to require such performance at any time thereafter, nor will the waiver by either party of a breach of any promise, condition or covenant hereof be taken or held to be a waiver of the promise, condition or covenant.

20.7 MODIFICATION

This agreement may be modified in writing upon mutual agreement of the parties.

20.8 NOTICE

Unless otherwise provided, where notice is required to be given, it will be sufficient:

1. In the case of faculty unit members, if sent by certified mail to their last reported residential address or if hand delivered directly to the affected faculty unit member;

2. In the case of COHE, if sent by certified mail to the institutional COHE president at the last reported residential address, or COHE, 2116 South Minnesota Avenue, Sioux Falls, South Dakota 57105, or hand-delivered to the institutional COHE president or to an employee of the Sioux Falls COHE office;

3. In the case of the board, if sent by certified mail to Board of Regents, Kneip Building, Pierre, South Dakota 57501, or hand-delivered to the executive director of the board;

4. In the case of institutional presidents or superintendents, if sent by certified mail to their respective institutional addresses, or hand-delivered to an employee of the respective president's or superintendent's office;

and in all other cases, if sent by campus or regular mails to the institutional office or regular business address of the person or party. The parties agree that a signed receipt acknowledging hand delivery will be provided upon request.

Notice will be required only when the words "notice" or "notification" appear in this agreement.

Where notice is required to be given by a date certain, it will be effective if postmarked by the United States Postal Service by midnight of the day prior to the specified date. Where notice is required to be given within a certain time period, it will be effective if postmarked by the United States Postal Service by midnight of the last day of such time period.

## XXI. DUES DEDUCTION

### 21.1 STATEMENT

During the term of this agreement, the board agrees to deduct COHE membership dues, in an amount established by COHE and communicated in writing to the board by an authorized official of COHE, from the pay of those faculty unit members in the bargaining unit who individually and voluntarily make such request on the dues deduction authorization form as depicted in Appendix H of this agreement.

Deductions will be made monthly. Annual dues will be deducted in twelve (12) equal installments for faculty unit members with twelve (12) month contracts, or whose nine (9) month compensation is paid in twelve (12) installments. Annual dues will be deducted in nine (9) equal installments for faculty unit members with less than twelve (12) month contracts. Twelve (12) month contract faculty unit members requesting dues deduction subsequent to July or less than twelve (12) month contract faculty unit members requesting the dues deduction subsequent to September will have their annual dues deducted in the remaining pay periods on a pro rata basis. The faculty unit member's dues deduction authorization form must reach the business office no later than the tenth day of the month in which the authorized dues deduction is to begin. COHE will give to the board written notice of any change in its dues at least thirty (30) working days prior to the effective date of any such change, provided only one (1) such change is made per calendar year.

The dues deducted will be remitted by the institution to the local COHE treasurer as soon as possible, but not later than fifteen (15) working days following the end of each pay period. Accompanying each remittance will be a list of the faculty unit members from whose salaries such deductions were made, and the amounts deducted.

The institutions will not be responsible for making deduction for dues if a faculty unit member's pay within a pay period, after other mandatory or voluntary deductions, is less than the amount authorized. In such event it will be the responsibility of COHE to collect its dues for that pay period directly from the faculty unit member.

The institution's responsibility for deducting dues from a faculty unit member's salary will terminate automatically upon either 1) revocation of the faculty unit member's prior dues deduction authorization, or 2) cessation of the authorized faculty unit member's employment, or 3) the cessation of the authorizing faculty unit member's inclusion in the bargaining unit.

Faculty unit members who wish to cancel their dues deduction authorization will forward a completed dues deduction cancellation

form (Appendix I) to the institutional payroll section prior to the first of the month in which the faculty unit member wishes their dues deduction authorization to be cancelled.

The institution will inform the institutional COHE chapter president of any request for dues deduction cancellation by the fifth working day of the month in which the dues deduction is to be cancelled.

COHE will indemnify, defend and hold the board, its members, officials, agents and representatives harmless against any claim, demand, suit, or any form of liability (monetary or otherwise), including attorneys' fees and costs, arising from any action taken or not taken by the board, its members, officials, agents or representatives in complying with this article or in reliance upon any notice, letter or written authorization furnished to the board pursuant hereto. COHE assumes full and sole responsibility for all monies deducted pursuant to this article upon remittance to COHE. COHE will promptly refund to the board any funds received pursuant to this article which are in excess of the amount of dues which the board has agreed to deduct.

The board will not deduct from the pay of any faculty unit member any COHE fines, penalties, and special assessments which are not a part of the amount of annual dues.

The board's responsibilities under this article will terminate automatically upon the expiration of this agreement.

## XXII. EFFECT, DURATION AND RENEGOTIATION

### 22.1 EFFECT AND DURATION

This agreement will take effect when signed and ratified by both parties. It will remain in full force and effect through the 30th day of June, 1988, except to the extent provided below.

On or before the first day of April, 1988, either party may notify the other that it wishes to renew or modify this agreement. In this event, the parties will meet no later than the 15th day of April, 1988, to negotiate with respect to a successor agreement.

If a successor agreement has not been ratified by the 30th day of June, 1988, the parties may mutually agree to extend the force and effect of this agreement.

## DIVISION II

## HIGHER EDUCATION

### I. INDIVIDUAL CONTRACTS

#### 1.1 TYPES OF APPOINTMENT

An appointment extended to a faculty unit member at a higher education institution will be one of the following: term, tenure track or tenure.

#### 1.2 TERM CONTRACTS

A term contract may be either part-time or full-time, and shall be of a definite term not to exceed one year or overlap two (2) fiscal years, unless such contract is approved by the board. A term contract shall terminate automatically at the end of the term, unless the board expressly renews the contract. Reasonable effort will be made to notify such faculty unit members, more than thirty (30) days prior to the end of their term, that they will have no further term appointment contract.

#### 1.3 TENURE TRACK CONTRACT

A tenure track contract is a qualifying appointment offered to a full-time faculty unit member who may be considered for a tenure contract at a later time, and shall be of a definite term, not to exceed one fiscal year. A tenure track contract may be renewed by the board, subject to procedures for nonrenewal of tenure track contracts set forth in Division II, Article I, Section 1.7. If a faculty unit member is offered a tenure track contract, the number of years the faculty unit member has served under term contracts may be credited by the board toward fulfillment of the period necessary for consideration for a tenure contract.

#### 1.4 TENURE APPOINTMENTS

Tenure contracts are addressed in Division II, Article IV, Tenure.

#### 1.5 CONTRACT YEAR

The nine-month individual appointment contract period for faculty unit members will extend from August 15, 1987, to May 14, 1988, inclusive. The date on which faculty unit members will be required to report for assigned duties will be no earlier than five (5) working days prior to the date of fall registration. The date on which faculty unit members will be released from assigned duties will be no later than five (5) working days after the last day of spring final examinations.

Except for final examination periods as established by the academic calendar, and with the exception of librarians, no faculty unit member shall have assigned duties on Saturdays or Sundays, or on days during breaks in the academic calendar when classes are not in session. Attendance at scheduled activities on those days shall be voluntary, with the exceptions noted, and there shall be no reprisals for nonattendance.

Faculty unit members shall have no assigned responsibilities on legal state holidays.

The board will retain its discretion on a year-to-year basis to employ faculty unit members for contract periods in excess of nine (9) months with proration of compensation.

1.6 INDIVIDUAL APPOINTMENT CONTRACTS

Faculty unit members shall receive written notice of appointment signed by the president, or an authorized representative, for each year they are employed by the board. The faculty member shall have twenty (20) calendar days from receipt of a notice to accept the employment offer, and the employment contract shall not become binding until the notice of appointment is executed by both the faculty member and the appointing authority, and returned by the faculty member to the institution. Each notice of appointment shall contain at least the following elements:

1. Date offered to the faculty unit member;
2. Rank, title, or classification;
3. Employment unit;
4. Beginning and ending dates of the employment contract;
5. Type of contract;
6. Any specific and special conditions and responsibilities of employment beyond the general responsibilities of the appointment;
7. A statement that the contract is subject to the constitution and laws of the state of South Dakota, policies and regulations of the board, and the provisions of this agreement;
8. Tenure status;
9. Prior service credited for tenure; and
10. Salary.

## 1.7 NONRENEWAL OF TENURE TRACK CONTRACTS

Prior to the issuance of a written notice of nonrenewal, the faculty unit member's immediate supervisor will provide the opportunity for a meeting with the faculty unit member to apprise the faculty unit member of the proposed action. The faculty unit member will be given at least five (5) working days' written notice of such meeting so that both the faculty unit member and the immediate supervisor may arrange to have present a witness or representative.

In order to facilitate the relocation of faculty unit members who are not to be rehired, the administration agrees to provide notice, including reasons, of its intent not to rehire any faculty unit members serving under a tenure track contract in accordance with the following schedule:

1. A faculty unit member who has completed less than one (1) academic year of service under a tenure track contract shall receive written notice of nonrenewal from the institution before March 1 of the current year of appointment.

2. If a faculty unit member has completed more than one (1) but less than four (4) years of service under a tenure track contract, the institution shall provide the faculty unit member with written notice of nonrenewal before December 15 of the current year of employment. However, if the faculty unit member is currently subject to the provisions of a constructive plan imposed prior to December 15, the institution shall provide the faculty unit member notice of nonrenewal prior to March 1 of the current year of employment. The faculty unit member so notified may file a request for reconsideration with the president within ten (10) working days of receipt of the notice of nonrenewal. The president, after reviewing the request, shall notify the faculty unit member, within ten (10) working days, of the final institutional recommendation to be forwarded to the board.

3. If a faculty unit member has completed at least four (4) years of service under a tenure track contract, the institution shall provide the faculty unit member with written notice of nonrenewal before April 1 of the current year of employment. Such faculty unit member having received written notice of nonrenewal shall receive a term contract for the term of one (1) academic year, effective the subsequent academic year. The faculty unit member may file a request for reconsideration and conference with the president within ten (10) working days of receipt of the notice of nonrenewal. The president, after reviewing the request and holding the conference, shall notify the faculty unit

member within ten (10) working days, of the final institutional recommendation to be forwarded to the board. The faculty unit member may file with the president a statement which will accompany the institutional recommendation to the board. The board will consider the institutional recommendation and any statement at its next regularly scheduled meeting and shall issue its binding decision which shall be deemed final at the end of ten (10) days from the date of issuance unless such faculty unit member shall submit a resignation prior thereto.

4. Nothing in this article shall prevent the administration from hiring a nonrenewed tenure track member on successive term contracts. Further, nothing in this article is intended to modify the rights and limitations contained in Division I, Article VI, Section 6.8.

If the administration is late in providing the notice stipulated in 1 or 2 above, the faculty unit member will be entitled to receive, at the election of the administration, either (1) an additional term contract for a period of time equal to twice the number of working days by which the notice is late; or (2) a payment equal to twice the number of working days by which the notice is late times the faculty unit member's monthly salary divided by twenty-two (22).

The years of service required for the above notice provisions will not be affected by any reduction of the tenure track period granted by the board pursuant to the fourth paragraph of Division II, Article IV, Section 4.1.

1.8 CONTRACT FULFILLMENT

Full-time faculty unit members who after their second year of employment, resign their individual contract for the purpose of receiving employment outside the regental system without the consent of the board shall be deemed thereby to consent to liquidated damage compensation to the board for the additional expense caused by said breach of contract. However, any faculty unit member who so resigns and breaches this contract shall be allowed to request a waiver of the deduction of said liquidated damages, in lump sum, from any pay owed to the unit member by the board. Upon good cause, the board shall not unreasonably withhold its waiver of said liquidated damages and the deduction thereof from allowances owed. Consent to resignation and breach of an individual contract shall be deemed given by the board if written notice is given to the institution thirty (30) or more days prior to the first day of the individual contract.

When deemed by the board to be appropriate, liquidated damages shall accrue and be assessed at the rate of $50 per day beginning on the 29th day prior to the first day of the individual contract, not to exceed $1,500.

## II. EVALUATION

### 2.1 PERFORMANCE EVALUATION GUIDELINES

Performance evaluations will be conducted in accordance with the following guidelines:

1. Non-tenured faculty unit members will be evaluated on an annual basis. The evaluation will be conducted by each faculty unit member's department head and will include student opinion surveys if the faculty unit member's duties include teaching.

2. Tenured faculty unit members shall receive an intensive performance review using procedures set forth in Division II, Article II, Section 2.2 five (5) years after their appointment with tenure and at five (5) year intervals thereafter. In addition, an annual performance evaluation for a tenured faculty unit member may be initiated by the faculty unit member or by the faculty unit member's department head, with the approval of the dean or next level of supervision.

3. The performance evaluation will be in written form and will be signed by the department head. A copy will be furnished to the faculty unit member being evaluated. The faculty unit member being evaluated will have ten (10) working days within which to respond. All such responses will be attached to the evaluation.

4. The department head shall, upon written request from the faculty unit member being evaluated, apprise the faculty unit member in writing of the faculty unit member's percentile ranking with other faculty unit members being evaluated by the department head, if such ranking exists.

5. As a part of the evaluation process, the faculty unit member and the department head may discuss the faculty unit member's planned activities and professional objectives for the following year(s). Correspondence and memoranda between the faculty unit member and the department head may be considered as part of the evaluation process. Upon request to the department head, a faculty unit member shall receive in writing the guidelines and performance expectations intended to be used for the performance and evaluation of the faculty unit member.

6. If the evaluation identifies deficiencies in performance of assigned duties that are considered serious by the faculty unit member's department head, the administration will develop a constructive plan to remedy the faculty unit member's deficiencies and will provide

reasonable assistance to the faculty unit member in achieving the required improvement. The plan will provide for guidance and direction from the administration, and for achievement by the faculty unit member. The ultimate responsibility for improvement shall rest with the faculty unit member; however, it should be the responsibility of the administration to assist the faculty unit member in making improvements. In the event that the faculty unit member disagrees with the plan, the faculty unit member may, within (10) ten days, request the intercession of a peer group established by COHE for that purpose. The peer group shall consider the dispute and, within twenty (20) days following the request, submit its recommendation for affirmance, reversal or modification. Such recommendation shall be advisory only, but will become a part of the faculty unit member's personnel file. The constructive plan shall not be imposed on any faculty unit member either as harassment or as a guise to effect a termination or discharge under Division I, Article XI. For purposes of invoking the provisions of Article XI of this agreement, no more than one constructive plan will be developed in any academic year, unless such deficiencies addressed in the first plan can reasonably be corrected within a semester and, in such latter event, a second plan may be issued prior to the second semester.

No plan will be implemented until the department head has held a meeting with the faculty unit member to discuss the plan and until such constructive plan has been submitted and approved by the institutional president. If the faculty unit member disagrees with any aspect of the constructive plan, the faculty unit member will have the right to respond in writing to the areas of disagreement within ten (10) working days of the meeting. All such written objections and comments of the faculty unit member will be attached to the constructive plan. If the faculty unit member fails to correct the serious deficiencies identified in the constructive plan, the faculty unit member may be subject to the alternative disciplines under Division I, Article XI, Code of Professional Conduct - Discipline - Just Cause.

2.2 EVALUATION PROCEDURE

Prior to the last day of February, the department head will complete all required evaluations or reviews for the previous calendar year [or applicable period for tenured faculty unit member(s)], using the form in Appendix F. The evaluation or review will be placed in the faculty unit member's personnel file and will address:

1. Establishment of responsibilities for each faculty unit member. Before the beginning of classes in the first

semester, based on the workload goals of the department, the faculty unit member and department head will discuss percentages of time which the faculty unit member will allocate to teaching, research and scholarship, and service. Such discussion will be repeated whenever a significant change in workload is anticipated. In the event of a disagreement in the percentages, either the faculty unit member or his department head may consult departmental peer groups established by COHE in an attempt to resolve the differences. In the event that such differences are unresolved, the academic dean shall unilaterally assign responsibilities to the faculty unit member.

2. Faculty unit member self-evaluation. The faculty unit member will review his/her factual information listing the faculty unit member's accomplishments for the year (or applicable period) and may include any student comments solicited by the faculty unit member. Based on this information, the faculty unit member will complete Part A of Appendix F (the evaluation form), which shall be presented to the department head by January 1 of each year (or applicable period). The faculty unit member and the department head will informally discuss the self-evaluation by January 30.

3. Assessment of performance by the department head and indication of progress toward promotion, tenure, contract renewal, or augmentation monies (PIF, Merit, Critical, Discretionary, etc.). Based on observations of the faculty unit member in each of the areas of teaching, research/scholarship, and service, and the informal discussion described above, the department head will complete the remainder of the evaluation form (Part B of Appendix F). Observations, in the sense here being employed, may include, but do not require, classroom observations, unless there is good cause to suspect serious deficiencies in performance. Included in the evaluation must be comments about the faculty unit member's performance in each of the areas of teaching, research and scholarship, and service. Also included in the evaluation, when appropriate, must be comments about progress toward promotion and/or toward tenure and recommendations for augmentation monies and contract renewal.

   If a faculty unit member disagrees with the evaluation, the faculty unit member may send the evaluation to a peer group established by COHE for additional signed recommendations to be attached to the evaluation before the forms need to be signed. This process must be completed by March 20.

If a tenured faculty unit member disagrees with the intensive review, it may be sent by either party to the lowest appropriate promotion and tenure committee for additional recommendations to be attached to the evaluation before the forms need to be signed. This process must be completed by March 20.

4. Faculty unit member response to this assessment. If the faculty unit member has any additional comments to make after this process, the faculty unit member may note them in the "staff member's comments" section. This process must be finished by March 25.

5. Review and recommendation by the vice president/dean. The vice president/dean will review the completed evaluation and make appropriate comments to the president about contract renewal, augmentation monies, promotion, or tenure, and/or performance. In the case of tenured faculty unit members, the president may make his report to the Board, which may include:

   a. That the faculty unit member's performance is within expectation;

   b. That the faculty unit member should be placed on a constructive plan, or subjected to the appropriate measures in accordance with Division I, Article XI.

2.3 STUDENT OPINION SURVEYS

Student opinion surveys will be used as part of the evaluation of faculty unit members, along with other procedures set forth in this article. If serious deficiencies in performance are suggested in student opinion surveys, the department head shall investigate such deficiencies by evaluative means, other than by student opinion surveys. Only if such investigation corroborates the results of the student opinion surveys shall the faculty unit member's department head include in the evaluation the deficiencies in performance suggested in the student opinion surveys.

1. The term "student opinion surveys" is understood to include only opinion surveys by classroom students and a random sample of graduating seniors in the case of annual evaluations of faculty unit members.

   In the case of intensive performance reviews of tenured faculty unit members, the term "student opinion surveys" is understood to include opinion surveys by classroom students, graduating seniors, and alumni three (3) to five (5) years after graduation. Such surveys in the case of graduating seniors and alumni are deemed to mean a random sample thereof.

2. No unsigned individual student opinion survey, or any portion thereof, will be copied by the administration, except for purposes of data analysis. Confidentiality and security will be maintained for all evaluation data.

3. Student opinion surveys will not be used as the controlling criterion for personnel actions.

4. The faculty unit member's department head shall prepare a statistical profile and a narrative summary of the student opinion surveys.

2.4 FILING OF EVALUATION DOCUMENTS

The statistical profile and narrative summary of the student opinion surveys required by Division II, Article II, Section 2.3 will be attached and made a part of the performance evaluation prepared in accordance with the procedures set forth in Division II, Article II, Section 2.2. If the student opinion surveys indicate a deficiency in performance of duties, the results of the department head's corroborative investigation must also be attached.

The completed evaluation and any plan developed to correct deficiencies will be placed in the faculty unit member's personnel file.

## III. RANK AND PROMOTION

### 3.1 RANK QUALIFICATIONS FOR EMPLOYMENT AND PROMOTION

The rank qualifications which are set forth below are minimums for employment and promotions. All reference to teaching or research experience in rank qualifications listed below will mean full-time academic year appointments. For purposes of this article, one year of full-time successful service with the Agricultural Cooperative Extension Service is equivalent to one year of successful college teaching or research experience.

### 3.2 MINIMUM RANK QUALIFICATIONS

INSTRUCTOR:

1. Earned baccalaureate and three (3) years of successful teaching experience in an appropriate field (or equivalent appropriate experience); or

2. Earned master's; or

3. Demonstrated knowledge and experience leading to regional or national recognition in field of specialty.

ASSISTANT PROFESSOR:

1. Earned master's and three (3) years of successful college teaching or research experience in appropriate fields (or appropriate equivalent experience). For faculty unit members whose initial appointment is for the 1982/83 fiscal year or thereafter, thirty (30) additional hours of graduate credit will be required; or

2. A post graduate degree, other than a doctorate, recognized by the institutional administration, as terminal for the faculty unit members' discipline, and two (2) years of successful college teaching or research experience in appropriate fields (or appropriate equivalent experience); or

3. Earned doctorate.

ASSOCIATE PROFESSOR:

1. Earned doctorate and five (5) years of successful college teaching or research experience in appropriate fields (or appropriate equivalent experience); or

2. A post-graduate degree, other than a doctorate, recognized by the institutional administration, as terminal for the faculty unit members' discipline and six (6) years of successful college teaching or research

experience in appropriate fields (or appropriate equivalent experience);

3. Evidence of scholarship.

PROFESSOR:

1. Earned doctorate and ten (10) years of successful college teaching or research experience in appropriate fields (or appropriate equivalent experience); or

2. A post-graduate degree, other than a doctorate, recognized by the institutional administration, as terminal for the faculty unit members' discipline, and twelve (12) years of successful college teaching or research experience in appropriate fields (or appropriate equivalent experience);

3. Evidence of scholarship.

The administration may recommend the following rank titles to the board for faculty unit members employed in specialized or technical areas in accordance with the exceptions criteria set forth in Division II, Article III, Section 3.4.

INSTRUCTOR [Technical]:

1. Demonstrated knowledge and experience in field of specialty, three (3) years of administratively approved industrial or business work experience in the area of teaching specialty, and meet qualifications of job description; or

2. Earned baccalaureate degree and three (3) years of administratively approved industrial or business work experience in the area of teaching specialty; or

3. Earned master's degree.

ASSISTANT PROFESSOR [Technical]:

1. Earned bachelors degree, three (3) years of administratively approved industrial or business work experience in the area of teaching specialty, and five (5) years of college teaching experience; or

2. Earned bachelors degree, three (3) years of administratively approved industrial or business work experience in the area of teaching specialty, three (3) months of administratively approved additional industrial or business experience since initial appointment, or one hundred twenty (120) clock hours of administratively approved technical specialty schooling, or five (5) semester hours toward an advanced degree supportive of

teaching major, and four (4) years of successful college teaching experience in the specialty; or

3. Earned master's degree and three (3) years of successful college teaching experience in the specialty.

ASSOCIATE PROFESSOR [Technical]:

1. Earned baccalaureate degree, three (3) years of administratively approved industrial or business experience in the area of teaching specialty, six (6) months of administratively approved additional industrial or business experience since receiving assistant professor rank, or two hundred forty (240) clock hours of administratively approved technical specialty schooling, or ten (10) semester hours toward an advanced degree supportive of teaching specialty, and eight (8) years of successful college teaching experience; or

2. Earned master's degree, three (3) years of administratively approved industrial or business experience in the area of teaching specialty, and eight (8) years of successful college teaching experience in specialty.

PROFESSOR [Technical]:

1. Earned master's degree, plus fifteen (15) semester hours, three (3) years of administratively approved industrial or business experience in the area of teaching specialty, and twelve (12) years of successful college teaching experience in specialty; or

2. Earned master's degree, plus fifteen (15) semester hours, three (3) years of administratively approved industrial or business experience in the area of teaching specialty, and additional six (6) months of administratively approved business or industrial experience since receiving the associate professor rank or two hundred forty (240) clock hours of administratively approved technical specialty schooling and ten (10) years of successful college teaching experience in specialty; or

3. Earned master's degree, three (3) years of administratively approved industrial or business experience in the area of teaching specialty, and additional twelve (12) months of administratively approved industrial or business experience since receiving the associate professor rank or four hundred eighty (480) clock hours of administratively approved technical specialty schooling, and ten (10) years of successful college teaching experience in specialty; or

4. Earned specialist degree, three (3) years of administratively approved industrial or business experience in area of teaching specialty, and nine (9) years of successful college teaching experience in specialty; or

5. Earned doctorate three (3) years of administratively approved industrial or business experience in area of teaching specialty, and eight (8) years of successful college teaching experience in specialty.

3.3 MINIMUM PROMOTION ELIGIBILITY CRITERIA

The minimum eligibility criteria for consideration for promotion in rank will be:

Instructor to Assistant Professor [Academic or Technical]:

Three (3) years in rank, including at least two (2) in the institution; high level of performance in the areas of responsibilities commensurate with promotion to the rank of assistant professor.

Assistant Professor to Associate Professor [Academic or Technical]:

Four (4) years in rank in the institution; high level of performance in the areas of responsibilities commensurate with promotion to the rank of associate professor.

Associate Professor to Professor [Academic or Technical]:

Five (5) years in rank in the institution; high level of performance in the areas of responsibilities commensurate with promotion to the rank of professor.

All reference to years in rank herein will mean full-time academic year appointments.

3.4 EXCEPTIONS

Upon the recommendation of the institutional president, the board may grant exceptions to the minimum rank qualifications (Division II, Article III, Section 3.2) or the promotion eligibility criteria relating to the minimum number of years in rank in the institution (Division II, Article III, Section 3.3), or both. The board will consider for promotion under this section only those faculty unit members who, in the judgment of the board, have demonstrated that their level of performance and/or professional qualifications are notably excellent and sufficient to offset the lack of a required degree or years in rank.

3.5 PROMOTION AND TENURE COMMITTEE FORMULATION

The institutional promotion and tenure committee will consist of elected members of the faculty unit and members of the administration. The composition of the committee will be: fifty percent (50%) faculty unit members; fifty percent (50%) administrators. Each president will determine the total number of members for the institutional promotion and tenure committee at each institution.

The faculty unit representatives on the institutional promotion and tenure committee will be elected by the faculty unit as soon as practicable after the commencement of school activities in the fall. Membership terms will be for three (3) years.

Vacancies will be filled according to procedures established for the original appointment. Election procedures will be determined by COHE and the election will be conducted under its auspices. Election procedures must provide all faculty unit members with equal opportunities to be nominated for committee membership with the exception that faculty unit members, who themselves are to be considered for promotion or tenure, are not eligible for membership on the promotion and tenure committee during the academic year in which their promotion or tenure is being considered.

Administrators will be appointed by the president.

There will be, in addition to the institutional promotion and tenure committees at USD and SDSU, college or school promotion and tenure committees as the case may be. At all institutions, departments or other appropriate administrative units may petition the president for the creation of a promotion and tenure committee for the respective department or unit. If approved, the president will determine the membership consistent with the ratio and constituency heretofore established for the institutional promotion and tenure committee.

The promotion and tenure committees will make their recommendations to the administrator of the applicable department or appropriate unit. Administrators will consider the recommendations of their departmental or unit promotion and tenure committee in formulating their recommendations to the next level of the process.

3.6 PROCEDURES FOR PROMOTION RECOMMENDATIONS

Faculty unit members who wish to be considered for promotion will notify their immediate supervisor in writing no later than October 5. Such notification will allow the promotion and tenure committees, instituted under Division II, Article III, Section 3.5, access to the faculty unit member's personnel file. It is the responsibility of the faculty unit member to prepare documentation appropriate for use by the promotion and tenure committees and appropriate administrators in judging the faculty unit member's qualification for promotion. This documentation must accompany the

request to the immediate supervisor for consideration. This documentation and the recommendations of the department head (and of the departmental promotion and tenure committee, if any) will be forwarded by the department head to the administrator responsible for the process at the college/school level or institutional level, whichever is applicable, no later than November 5.

If an evaluation complies with Division II, Article II, such evaluation may be used for Division II, Article II and/or Article III.

If the institution has college or school promotion and tenure committees, the recommendations of the appropriate administrator (and of the college or school promotion and tenure committees) will be forwarded by that administrator, with the supporting documentation, to the president or designee no later than December 1 for consideration by the institutional promotion and tenure committee.

After reviewing the recommendations of applicable college, school or departmental promotion and tenure committees and appropriate administrators, the institutional promotion and tenure committee will add its recommendation and forward all information to the president no later than January 15 of each academic year. The working papers and files of the promotion and tenure committee(s) will remain confidential; except that, subsequent to the board's final determination, the president will have the written recommendations of administrators with supervisory responsibility for the faculty unit member placed in the faculty unit member's personnel file.

The faculty unit member will be notified no later than March 15 of the year in which the faculty unit member is being considered for promotion, of whether the president will recommend promotion to the board. Such notice will indicate the institutional promotion and tenure committee's recommendation. If the president intends to recommend that promotion be denied, the president will, upon receipt prior to April 1 of a written request, within fifteen (15) working days of the request provide reasons in writing for the decision. The reasons given shall not act to extend the rights and limitations under Division I, Article VI, Section 6.8, but shall be substantive in nature and shall transcend the mere fact of the recommendations by the committees by including the opinions of the president from the information then available to him/her.

## IV. TENURE

### 4.1 TENURE APPOINTMENT

A tenure contract may be extended to a faculty unit member in accordance with the provisions of this article. It entitles a faculty unit member to re-employment from year to year until such time as the faculty unit member resigns, retires or reaches mandatory retirement age, is discharged for cause (Division I, Article XI, Code of Conduct - Discipline - Just Cause), or is terminated pursuant to a reduction of personnel (Division I, Article IX, and Division II, Article VI, Faculty Unit Member Reduction Procedures). A tenure contract granted by an institution will be valid at that institution and may be transferable to other institutions within the system.

Not later than during the sixth year of tenure track contract service at an institution, and upon application by the faculty unit member on or before October 5, a faculty unit member will be considered for a tenure contract which would begin with the next academic year.

Tenure track service credit is not earned during a period of leave of absence, but may be earned during sabbatical leave periods.

The board may, at its discretion and upon the recommendation of the administration of the institution, reduce the number of years of tenure track service required.

A faculty unit member who has been granted a tenure contract at one institution within the system and is employed at another institution within the system may be considered for tenure during the second year of tenure track appointment at the new institution. A faculty unit member shall retain tenure in an intra-institutional transfer.

The board may grant tenure to a faculty unit member conditioned upon the attainment of a required academic degree. Such condition must be satisfied within a period of time specified by the board. The faculty unit member will be given a term contract pending satisfaction of the condition.

The performance record of a faculty unit member considered for tenure will be based in part upon the performance evaluations conducted by the administration during all years of service credited toward tenure qualification.

The institutional promotion and tenure committee will review the qualifications of each faculty unit member who has satisfied the tenure track service requirements. After consultation with applicable college, school or departmental promotion and tenure

committees, the institutional promotion and tenure committee will submit its recommendations as to whether or not each faculty unit member under consideration should be granted tenure. Those recommendations will be submitted to the President by no later than January 1 of each academic year. The working papers and files of the promotion and tenure committee(s) will remain confidential.

An institutional recommendation to grant tenure to a faculty unit member will be based upon an assessment of the candidate's past contributions and promise of future contributions to the goals and missions of the institution. The President will make the institutional recommendation to the Board by April 1.

The faculty unit member will be notified, not later than March 1 of the year in which the faculty unit member is being considered for tenure, of what the President will recommend to the Board regarding the faculty unit member's tenure status. Such notice will indicate the institutional tenure committee's recommendation. If the President intends to recommend that tenure be denied, the President will, upon request, within fifteen (15) working days of the request, provide reasons in writing for the decision. The reasons given shall not act to extend the rights and limitations under Division I, Article VI, Section 6.8, but shall be substantive in nature and shall transcend the mere fact of the recommendations by the committees by including the opinions of the president from the information then available to him/her.

Faculty unit members who hold tenure at the time of execution of this agreement will be deemed to have tenure under this agreement.

4.2 COMMITTEE FUNCTIONS

The process for formulation of institutional, college, school, department or unit promotion and tenure committees is described in Division II, Section 3.5.

The promotion and tenure committees will make their recommendations to the administrator of the applicable department or unit. Administrators will consult with their departmental or unit promotion and tenure committee in formulating their recommendations to the next successive promotion and tenure committee.

It will be the function of the institutional promotion and tenure committee to advise the administration as to whether or not the faculty unit member should be granted tenure.

4.3 ADMINISTRATIVE ACTIONS

The administration will make recommendations to the Board as to whether or not a faculty unit member should be awarded tenure.

4.4 EXCEPTIONS

Upon request of the President, the Board may approve exceptions to the minimum rank qualifications in accordance with Division II, Section 3.2.

## V. TRANSFER, ASSIGNMENT AND REASSIGNMENT

### 5.1 ASSIGNMENTS

The administration will make every effort to assign faculty unit members according to their area of qualification and expertise.

If faculty unit members believe that the duties which are being assigned are outside the area of their academic preparation, they will notify the president in writing, which notice will be placed in their personnel file.

Faculty unit members will have the opportunity to review their instructional schedules and discuss them with their department head before such schedule is finalized.

## VI. FACULTY UNIT MEMBER REDUCTION PROCEDURES

### 6.1 FACULTY UNIT MEMBER REDUCTION PROCEDURES

1. The following guidelines will be used in sequence in the identification of faculty unit members, within a designated organizational area, to be terminated subject to the need to retain personnel with special skills essential to a program.

   a. Whenever possible, faculty unit member reduction will be accomplished through attrition.

   b. Among faculty unit members serving under term appointments those employed in permanently funded positions will have retention priority over those employed in temporarily funded positions, and those employed full-time will have retention priority over those employed on a part-time basis.

   c. Faculty unit members serving under tenure track appointments will have retention priority over faculty unit members serving under term contracts.

   d. Faculty unit members serving under tenure appointments will have retention priority over faculty unit members serving under tenure track and term contracts.

2. Among faculty unit members having equal retention priority the faculty unit member with greatest seniority will have retention priority. Seniority will be based upon faculty unit member's total years of full-time equivalent employment within the system exclusive of periods of unpaid leave, provided that faculty unit members with a break in service of more than four (4) years will not be given credit for service prior to such break.

3. The preceding provisions of this article notwithstanding, a faculty unit member who is under a constructive plan with significant deficiencies remaining uncorrected after a reasonable time for such correction, may be terminated prior to any other faculty unit member. A constructive plan will not be used to frustrate the intent of this article.

4. If a tenured faculty unit member is terminated under this article, the position may not be filled for a period of two (2) years, unless the terminated faculty unit member has been offered reappointment and refused the offer. The terminated faculty unit member has twenty (20) working days from the receipt of an offer of reappointment to accept the position.

5. Faculty unit members will be recalled to their institution in order of greatest seniority provided the faculty unit member is qualified to perform the duties of the vacant position. No outside applicant will be employed unless there is no faculty unit member subject to recall who fulfills all qualifications specified for the vacancy.

6. The fringe benefits of faculty unit members who return to employment under item 4 or 5 above will, to the extent provided by law, be as they were at the time their previous employment terminated, provided the benefits still exist and they are eligible for them in the new position.

7. Every reasonable effort will be made to relocate a terminated faculty unit member in another academic position within the regental system that is vacant and to be filled, provided the faculty unit member fulfills all qualifications specified for the vacant position. Priority consideration for relocation will be given to those faculty unit members nearing retirement age. If relocation is accomplished the salary and other considerations of employment will be as stated for that position.

8. Every reasonable effort will be made to allow an affected unit member to complete the current appointment.

9. To the extent that the same or comparable positions are available, the accrued rights of faculty unit members will be maintained in those cases involving involuntary transfers of faculty unit members that have resulted from geographical relocation of programs. The board will provide moving expenses in the case of such transfers as provided by state rules and regulations.

6.2 FEDERAL FUNDING - SPECIAL CONDITIONS

A faculty unit member who is terminated in accordance with this article, and whose salary was fully supported by federal funds, will have no priority of employment over faculty unit members in positions supported by state funding sources, unless such faculty unit member was previously employed in a state funded position. In the latter case the faculty unit member will be treated in accordance with the guidelines provided in this article.

6.3 FURTHER PROVISIONS

A faculty unit member terminated pursuant to the provisions of this article may institute a grievance under Division I, Article VI, Contract Disputes, and the burden of proof will rest with the administration to the extent required by law.

## VII. UNIT MEMBER RESPONSIBILITIES

### 7.1 UNIT MEMBER RESPONSIBILITIES

Upon accepting an appointment, a faculty unit member generally assumes responsibility in three (3) areas: teaching, research and scholarship, and service unless otherwise specified under item 6 of Division II, Article I, Section 1.6. A representative list of duties within these areas is found in Appendix G. In addition, a faculty unit member is expected to perform assigned responsibilities in accordance with recognized standards of professional ethics and departmental policy.

### 7.2 WORKLOAD

The parties to this agreement recognize that workload policies are to be established for each campus for the purpose of making recommendations on credit hours, contact hours, preparations, clinical work and other items as deemed appropriate for their respective campuses. Any part(s) of the institutional workload policies which needs change or cannot be agreed to after discussions between the president and a majority of the committee's membership will be forwarded to the board and COHE negotiations teams for subsequent negotiations. In such cases, it is the intent of the parties that the previously established workload policies will remain in effect as referenced in the institutions' faculty handbooks.

### 7.3 WORKLOAD COMMITTEE

A single committee will be established for the purpose of reviewing, discussing and formulating workload policies and procedures. This committee will consist of two (2) members appointed by the board and two (2) members appointed by the president of COHE.

### 7.4 WORKLOAD - LIBRARIANS

Faculty unit members assigned to positions in the various institutional libraries shall normally average forty (40) hours during any work week. The work week, for purposes of this article, will begin at midnight Friday and end at midnight the following Friday.

A faculty unit member will not be required to work on more than five (5) calendar days per work week unless the assignment is mutually agreed to by the administration and the faculty unit member. A faculty unit member will not be required to work more than seven (7) consecutive days, unless mutually agreed to by the administration and the faculty unit member.

Faculty unit members assigned to library positions with teaching responsibilities will have their class time and class preparation time [two (2) hours per credit hour] counted into their forty (40) hour week.

All faculty unit members assigned to library positions will enjoy the same rights and must maintain the same professional expertise and responsibility as exercised by other faculty unit members by this agreement. Librarians shall be responsible for sufficient and adequate provision of library services to support the mission and goals of each institution. The determination of the adequacy of said services shall rest with the president of each institution and the librarians' immediate supervisor. Librarian faculty unit members shall be expected to perform assigned responsibilities in accordance with recognized standards of professional ethics and departmental policy. Any failure of librarian faculty unit members to perform according to said standards shall subject said members to discharge for cause or other disciplinary measures in accordance with Division I, Article XI of this agreement.

7.5 PRIVATE PRACTICE AND CONSULTATION

A higher education faculty unit member who enters into private practice, private consulting, additional teaching or research, or other activity for which additional compensation is received during the faculty unit member's contract period and during the period of this agreement, and excepting as next provided, will not contract to devote more than four (4) days per month on such activity if said activity shall require the faculty unit member's absence from duties. Such consultation and related activity privileges shall be cumulative to a maximum of six (6) days, with all accumulated time to terminate with the end of the faculty member's contract period. The activity for which the individual is released must be substantially and significantly related to assigned duties. Such activity must promote state and local economic development or must benefit the professional discipline and development of the individual, all as shall be determined by the president under such guidelines and restrictions, as shall be established from time to time by the board. Release time will be subject to the following conditions:

The faculty unit member will:

1. Apply in writing to the president, on established forms, for written approval before engaging in such activity or contracting to do so;

2. Report to the president through administrative channels the activity, duration of the activity, and the number of hours which were devoted to the additional activity;

3. Limit and restrict such activity so that it does not interfere with assigned responsibilities;

4. Reimburse the institution at the institutionally established rate for any institutional space, equipment, personnel, and materials used for such additional activity.

## VIII. WORKING CONDITIONS

### 8.1 OFFICE SECURITY

If an office is assigned to a faculty unit member, the institution will provide security of each faculty unit member's office by means of a lockable door. The institution will furnish the faculty unit member a lockable desk or a lockable file. Access to a faculty unit member's desk and files by the parties to this agreement will be dependent upon the authorization of the faculty unit member; however, in exceptional circumstances, the administration shall be allowed access to a faculty unit member's desk and files in the company of the faculty unit member or designee.

### 8.2 HEATING AND AIR CONDITIONING

An effort will be made, subject to budgetary and physical constraints, to improve present air conditioning and heating conditions through deferred maintenance funds. Where feasible, seasonal reassignment of offices will be made at the request of the faculty unit member.

### 8.3 EDUCATIONAL MATERIALS

Higher education faculty unit members will have the opportunity to select the materials and texts for the courses for which they are professionally responsible, provided that these are consistent with the course descriptions and not in conflict with the continuity of the curriculum. Every reasonable effort will be made to provide adequate equipment and materials required for each approved course of study.

## IX. LEAVES

### 9.1 SICK LEAVE

Full-time faculty unit members at the higher education institutions who have contracts for the full academic year will accrue nine (9) hours of sick leave credit per month, except during the months of September and March, when eleven (11) hours are accrued. Faculty unit members who are employed at least fifty percent (50%), but less than one hundred percent (100%), during the full academic year, will accrue sick leave on a prorated basis of the above. Accumulation of unused accrued sick leave will be unlimited.

### 9.2 ANNUAL LEAVE

Faculty unit members who have ten (10), eleven (11), or twelve (12) month appointments, exclusive of summer session appointments, and who are required to perform regular duties during student vacation periods, shall accrue annual leave credit on the following schedule for each month of service:

| Years of Service | Rate of Accrual |
|---|---|
| 0 through 15 | 10 hours per month |
| Over 15 | 13 hours per month except during September and March when 15 hours are accrued |

Accrual begins on the faculty unit member's date of employment. No annual leave may be taken until the faculty unit member has completed six (6) months of service. The total accrual at the end of any one (1) month may not exceed that which the faculty unit member may earn in two (2) years of service. When a faculty unit member is on annual leave and is terminating employment, no other type of leave may be used.

## X. SALARY PROVISIONS

### 10.1 SALARY DISTRIBUTIONS

1. This section shall be in effect immediately upon ratification and approval by both COHE and the Board. All salary increase monies appropriated by the legislature will be included in the following distribution plan.

2. No faculty member will suffer a reduction in pay as a result of this distribution plan.

3. The salary increase money allocated to each institution will be divided into two general pools, with 70% to be distributed under institutional plans to be developed under this agreement (See appendices) and 30% to be distributed on a merit plan developed at each institution by the administration.

4. The 70% pool-plan shall be developed at each institution in the following manner:

(a) The administration at each institution will meet with representatives of COHE to develop the institutional distribution plan for the distribution of such funds in a manner consistent with appropriate market drive analysis and influence;

(b) In the event a plan cannot be so developed, or where an irreconcilable dispute shall result from the joint efforts of the parties, the institution on the one hand, and COHE of the other, will each propose a plan consistent with the collective bargaining agreement and the entire matter will be referred to the negotiating teams for COHE and the Board. Such referral shall be accomplished within ten (10) days of either party perceiving a stalemate in the discussions and giving a written notice thereof to the Chief Negotiators for each side. Thereafter, negotiations shall resume on the issue referred within ten (10) days.

### 10.2 SALARY IMPROVEMENT

The parties recognize that faculty salaries are significantly lower than those paid to colleagues with comparable qualifications and experience in surrounding states.

The parties agree that a salary improvement program is necessary to make faculty unit member salaries commensurate with those of their colleagues in surrounding states and to make the South Dakota higher education system competitive with those states with respect to the hiring and retention of faculty.

To that end, the parties agree that discussion pursuant to Division I, Article XVIII, Section 18.4 of this agreement shall include seeking agreement on the internal and external funding necessary to bring faculty salaries comparable with those of surrounding states and discussion of a timetable by which those levels might feasibly be achieved.

10.3 PROMOTION INCREMENTS

A faculty unit member who is to be promoted will receive a promotion increment based on the faculty unit member's current fiscal year base salary. If the faculty unit member's next fiscal year contract is for a different percentage of time or number of months than was in effect in the current fiscal year, the current fiscal year base salary will be adjusted to reflect such changes prior to the application of the following schedule of promotion increments:

Instructor to Assistant Professor - 6%

Assistant Professor to Associate Professor - 8%

Associate Professor to Professor - 10%

10.4 CONTINUING EDUCATION AND EXTENSION TEACHING COMPENSATION

Each faculty unit member accepting a contract, in addition to the faculty unit member's regular employment appointment, to teach a continuing education/extension course, will be compensated at a negotiated rate not less than four hundred fifty dollars ($450) per semester credit hours assigned, subject to the qualification set forth below. When a course fails to meet the specified minimum enrollment, the contract may be voided by the administration or the faculty unit member may be given the option to elect in writing to accept compensation at a lesser amount based on net revenue, considering deductions for fringe benefits, course-related travel and administrative costs.

It is the intent of the parties to this agreement that the assignment of teaching these courses is not to be an overload assignment.

10.5 SUMMER SESSION COMPENSATION

This section applies only to those institutions which have not negotiated local campus agreements with respect to summer session compensation for the summer session(s) prior to the signing and ratification of this agreement.

It is the intent of the parties that where summer session compensation has been previously determined by a percentage of the academic year base salary that the same process be continued for the summer. Negotiations will include minimum class size and course offerings. If the local parties fail to reach agreement prior to May 1 of each year, the matter shall be referred to the board and

COHE negotatiation teams for resolution. If the matter is not resolved within ten (10) working days thereafter, the board shall resolve the matter at the next regular board meeting.

When a course fails to meet a specified enrollment, the contract may be voided by the administration, or the faculty unit member may be given the option to elect in writing, to accept compensation at a lesser amount based on net revenue considering deductions for fringe benefits, course-related costs and administrative costs.

## DIVISION III

## SPECIAL SCHOOLS

### I. INDIVIDUAL CONTRACTS

#### 1.1 TYPES OF CONTRACTS

A contract extended to a faculty unit member at a special school institution will be one of the following: continuing, temporary, or probationary.

#### 1.2 TEMPORARY CONTRACTS

A temporary contract may be for either part-time or full-time employment, will be for a definite term not to exceed one (1) fiscal year, and will terminate automatically at the end of the term. Such contracts are renewable solely at the discretion of the board. Reasons for the issuance of temporary contracts may include, but are not limited to, the following: funding by grants or special projects outside the board's legislative appropriation, temporary replacement of a faculty unit member on educational or other leave of absence, a temporary manpower need created for the interim of a job search for an unanticipated increased workload, or for a vacancy within a school term where it is more appropriate to fill the position temporarily. If a faculty unit member's contract is changed to a continuing contract, the number of years the faculty unit member has served under temporary contracts may be credited, at the discretion of the board, towards fulfillment of the period necessary for consideration for a continuing contract. Temporary contracts will not be used to avoid the proper application and use of probationary or continuing contracts.

#### 1.3 PROBATIONARY CONTRACTS

A probationary contract may be given to a full-time faculty unit member who is occupying a permanent position and who is in the first or second complete academic year of appointment with the special school. During the period of probationary appointment, faculty unit members will be evaluated once each semester and informed of any deficiencies. Evaluations and plans to correct deficiencies will be conducted in accordance with Division I, Article VII and Division III, Article II, Evaluation.

#### 1.4 CONTINUING CONTRACTS

Any faculty unit member employed at one (1) of the special schools who is in or beyond the third full year of employment will be automatically re-appointed for the following year, unless notice of intention not to renew the contract is received on or before the third Monday of March of any year.

Faculty unit members who are in or beyond their third year of employment at the institution will have fifteen (15) working days from the date of notification of nonrenewal in which to schedule a meeting with the superintendent. During the meeting, the superintendent will make available to the faculty unit member for review the faculty unit member's personnel file, advise the faculty unit member in writing of the reasons on which the intention not to renew is based, and afford the faculty unit member an opportunity for an informal conference in a confidential setting of the reasons. The faculty unit member may bring a representative of the member's choosing to the conference. Within five (5) working days of the conference, the superintendent will notify the faculty unit member as to whether the superintendent will rescind the notice of intention to nonrenew or recommend to the board that the faculty unit member be nonrenewed. Evaluations and plans to correct deficiencies will be conducted in accordance with Division I, Article VII and Division III, Article II, Evaluation.

The faculty unit member may seek review of the superintendent's decision within ten (10) working days by submitting a written appeal to the board, if the faculty unit member believes the reasons given for nonrenewal are not true or believes procedural rights have been violated. Any such review will be processed in accordance with Division I, Article IV, Contract Disputes, Part A, beginning at Step 3.

1.5 INDIVIDUAL APPOINTMENT CONTRACTS

Faculty unit members shall receive written notice of appointment signed by the president, superintendent, or an authorized representative, for each year they are employed by the board. The faculty member shall have twenty (20) calendar days from receipt of notice to accept the employment offer, and the employment contract shall not become binding until the notice of appointment is executed by both the faculty member and the appointing authority, and returned by the faculty member to the institution. Each notice of appointment shall contain at least the following elements:

1. Date offered to the faculty unit member;
2. Title or classification;
3. Employment unit;
4. Beginning and ending dates of the contract;
5. Type of contract;
6. Any specific and special conditions and responsibilities of employment beyond the general responsibilities of the appointment;

7. A statement that the contract is subject to the constitution and laws of the state of South Dakota, policies and regulations of the board, and the provisions of this agreement;

8. Salary;

9. Tentative teaching assignments which will include, for example, grade level or group level: Early Childhood, Preschool, Primary, Intermediate, Junior High, High School, Vocational, Itinerant or Remedial. Subject areas for assignments which are not in a self-contained classroom will be listed.

1.6 CONTRACT YEAR

The contract year for the special schools will be set by the board relative to the following guidelines:

1. The school year for nine (9) month faculty unit members will not exceed 175 student contact days. New faculty unit members will have no more than two (2) orientation days. In addition, all faculty unit members will have no more than six (6) professional days, which may include a registration day. At least one (1) professional day, prior to the first day of classes, will be devoted exclusively to the teachers' classroom preparation. Nine (9) month faculty unit members will not be required to report for work prior to August 18 or work after June 3.

2. No faculty unit member will be required to work on Saturdays or Sundays. The Saturday-Sunday exclusion does not apply to the SDSVH Deaf-Blind Department.

3. Attendance at the SDEA Convention may be included as part of the six professional days. Faculty will be allowed to choose to attend the convention or to remain at the school/worksite.

4. The contract year for ten (10) month faculty unit members will not exceed 195 contact days, plus professional days as specified for nine (9) month faculty unit members. Based upon the needs of the program, the contract year will begin approximately ten (10) working days prior to nine (9) month faculty unit members and conclude approximately ten (10) working days following nine (9) month faculty unit members.

5. The employment contract period for twelve (12) month faculty unit members will begin on July 1 and end June 30.

6. No student contact days or working days will be held on legal state holidays, with the exception of Veterans Day. If Veterans Day is a scheduled contact day, faculty unit members will have an additional day added to another vacation period.

7. If scheduled student contact days for nine (9) month faculty unit members are less than 175 days due to inclement weather, or other unforeseen conditions, additional contact days will be agreed to by the parties. If the parties cannot reach agreement, the superintendent will designate the replacement days. These days will be within the contract period or immediately following the end of the contract period if it is unworkable to schedule such within the contract period.

1.7 NONRENEWAL OF PROBATIONARY CONTRACTS

On or before the first day of May, the administration will notify in writing a faculty unit member who is in the first or second full year of employment at one of the special schools, of its intention not to renew the faculty unit member's contract. The faculty unit member, upon written request made within five (5) working days of the notice, will be afforded an informal, private conference with the administration. The faculty unit member will have the right to have a representative present. The conference will not be required if the faculty unit member is not being rehired because of a reduction in staff. The decision of the administration will be final and is not subject to the grievance procedure.

1.8 CONTRACT FULFILLMENT

Full-time faculty unit members who, after their second year of employment, resign their individual contract for the purpose of receiving employment outside the regental system without the consent of the board shall be deemed thereby to consent to liquidated damage compensation to the board for the additional expense caused by said breach of contract. However, any faculty unit member who so resigns and breaches this contract shall be allowed to request a waiver of the deduction of said liquidated damages, in lump sum, from any pay owed to the unit member by the board. Upon good cause, the board shall not unreasonably withhold its waiver of said liquidated damages and the deduction thereof from allowances owed. Consent to resignation and breach of an individual contract shall be deemed given by the board if written notice is given to the institution thirty (30) or more days prior to the first day of the individual contract.

When deemed by the board to be appropriate, liquidated damages shall accrue and be assessed at the rate of $35 per day beginning on the 29th day prior to the first day of the individual contract, not to exceed $1,000.

## II. EVALUATION

### 2.1 EVALUATION PROCEDURES

Prior to establishing or revising evaluation procedures and instruments, the administration will initiate the following sequence:

1. The administration will develop tentative faculty evaluation procedures and instruments.

2. The administration will transmit the tentative faculty evaluation procedures and instruments to COHE for review.

3. COHE will have fifteen (15) working days to submit written recommendations to the administration. Upon request of COHE, a meeting will be held to discuss the recommendations.

4. The administration will finalize, publish, and distribute the evaluation procedures and instruments to each faculty unit member for informational purposes.

### 2.2 PERFORMANCE EVALUATION GUIDELINES

1. Probationary faculty unit members will be formally evaluated during each semester of their first two (2) years of employment at the special schools. Formal evaluation will be completed by December 20 in the fall semester and April 15 in the spring semester.

2. Annual evaluation of continuing contract faculty unit members will be completed by April 30 of each year.

3. Faculty evaluation is an ongoing process and will include at least one (1) formal observation of not less than thirty (30) minutes of a class period, and may consist of informal observations of assigned responsibilities.

4. Formal classroom observation(s) of faculty unit members as a part of the evaluation procedure, will be preannounced.

5. The evaluator(s) will discuss the formal evaluation document with the faculty unit member. The performance evaluation will be in written form and signed by the evaluator(s), with a copy furnished to the faculty unit member prior to the discussion. The faculty unit member will have ten (10) working days in which to respond, in writing. All such responses will be given to the evaluator who in turn will attach the faculty unit member's response(s) to the evaluation instrument.

6. If the evaluation identified deficiencies in the performance of assigned duties that are considered serious by the supervisor(s), the administration will develop a constructive plan to remedy the faculty unit member's deficiencies. The plan will provide for assistance from the administration.

   No plan will be implemented until the immediate supervisor has held a meeting with the faculty unit member to discuss the plan. If the faculty unit member disagrees with any aspect of the plan, the faculty unit member will have the right to respond in writing to the areas of disagreement. All such objections of the faculty unit member will be attached to the plan.

## III. TRANSFER, ASSIGNMENT AND REASSIGNMENT

### 3.1 ASSIGNMENT

The administration will make every effort to assign the faculty unit members to their teaching assignments as soon as possible. Fair consideration will be given for the faculty unit member's current assignment. The faculty unit member will have the opportunity to review the tentative assignment/schedule and discuss it with the administration before such assignment is finalized. Insofar as circumstances shall reasonably permit, assignments shall be finalized by June 15.

In the event changes in such assignments occur, the faculty unit member will be notified. If requested, the faculty unit member will have the right to discuss the change in assignment with the administration, if such a request is made within five (5) working days of the notification of change in assignment. If the faculty unit member does not wish to accept the change in assignment, the faculty unit member may terminate the contract by written notice within ten (10) working days of the change in assignment notification. Changes in the faculty unit member's assignment will not be made later than August 1, except by mutual agreement.

The administration will meet with teachers, individually or in groups, prior to March 15, to exchange information about recommendations for classroom groupings of students and to address student needs and population changes for the following school year.

### 3.2 REASSIGNMENT OR TRANSFER

The reassignment of faculty unit members to another assignment will be made by the superintendent or designated representative.

Criteria for reassignment and/or transfer include the following (not in priority order):

1. Area of certification;
2. Relative contribution which the faculty unit member could make to the students;
3. Educational need of special school;
4. Opportunity for professional growth;
5. Degree major and/or minor area of preparation;
6. Length of service at SDSD/SDSVH;
7. Fair consideration for current assignment.

The administration will post, in the location or locations usually used for faculty notices, vacancies which occur during the

academic year and vacancies for the following academic year, as soon as such vacancies are certain. During the months of June, July and August, vacancy notices will be sent to the presidents of the local COHE chapters.

Prior to May 1, the administration will meet with each faculty unit member for whom a change of assignment is intended for the following school year for the purpose of discussing those tentative assignments and reasons for reassignment.

Tentative teaching assignments/schedules will be provided to faculty unit members prior to May 15. Faculty unit members will discuss their schedule/teaching assignment with their supervisor before such schedule is finalized. Insofar as circumstances shall reasonably permit, assignments shall be finalized prior to June 15.

When changes in assignment are necessary, due to changes in enrollments or programs, faculty unit members in those positions will be notified in writing as soon as possible. Lists of positions will be made available to all teachers being reassigned. The administration will make every effort to reassign faculty unit members according to their area of qualification and expertise.

3.3 JOB SHARING

Job sharing may be proposed by teachers or administrators. The sharing of one teaching position by two teachers may be approved at the sole discretion of the superintendent. Such sharing must be agreed to in writing by both teachers. Teachers who are sharing a position shall be granted the same rights and privileges as other part-time teachers. A job sharing plan must include a method for the sharing of information about students which the superintendent finds satisfactory. It is understood that the teachers may be required to spend noncompensated time together sharing this information.

## IV. FACULTY UNIT MEMBER REDUCTION PROCEDURES

### 4.1 FACULTY UNIT MEMBER REDUCTION PROCEDURES

At the special schools, the following guidelines will be used in sequence in the identification of faculty unit members, within a designated organizational area, to be terminated subject to the need to retain personnel with special skills essential to a program:

1. Whenever possible, faculty unit member reduction will be accomplished through attrition.

2. Among faculty unit members serving under probationary contracts, those employed in permanently funded positions will have retention priority over those employed in temporarily funded positions, and those employed full-time will have retention priority over those employed on a part-time basis.

3. A qualified faculty unit member serving under a continuing contract will have retention priority over a faculty unit member serving under a probationary contract.

4. Among faculty unit members having equal retention priority, the faculty unit member with greatest seniority who is qualified to fill the staffing needs of the institution will have retention priority. Seniority will be based upon a faculty unit member's total years of full-time equivalent employment exclusive of periods of unpaid leave, provided that faculty unit members with a break in service of more than four (4) years will not be given credit for service prior to such break.

5. If a faculty unit member who is on continuing contract is terminated under this article, the position may not be filled for a period of two (2) years, unless the terminated faculty unit member has been offered reappointment. The terminated faculty unit member has twenty (20) working days from the receipt of notice to accept an offer of reappointment.

6. Faculty unit members will be recalled in order of greatest seniority, provided the faculty unit member is qualified to perform the duties of the vacant position.

7. The fringe benefits of faculty unit members who return to employment under this section will, to the extent provided by law, be as they were at the time their previous employment terminated, provided the benefits still exist and they are eligible for them in the new position.

8. Every effort will be made to relocate a terminated faculty unit member in other academic, administrative, or staff positions that are vacant at the special schools, provided the faculty unit member is qualified to perform the duties of the position. Special consideration for relocation will be given to those faculty unit members nearing retirement age. If a relocation is accomplished, the salary and other considerations of employment will be as stated for that position. In addition, a faculty unit member at the special schools will be considered for inter-institutional transfers in accordance with Division I, Article VIII, and Division III, Article III, Transfer, Assignment and Reassignment.

9. In all cases, affected faculty unit members will be allowed to complete their individual appointment contract.

10. The accrued rights of faculty unit members will be maintained in those cases involving involuntary transfers of faculty unit members that have resulted from geographical relocation of programs. The board will provide moving expenses in the case of such transfers as provided by state rules and regulations.

## V. ACADEMIC GOVERNANCE

### 5.1 CURRICULUM COMMITTEES

Curriculum committees will be established for the purpose of studying curriculum development at the special schools. The committees will include up to three (3) faculty unit members to be appointed by the COHE chapter president and up to three (3) administrators. The committees will be responsible for providing their recommendations to the superintendent regarding curriculum change or development of a curriculum area.

## VI. UNIT MEMBER RESPONSIBILITIES

### 6.1 WORKDAY - SOUTH DAKOTA SCHOOL FOR THE VISUALLY HANDICAPPED

The workday for the faculty unit members on the campus of the SDSVH will commence at 8:00 a.m. and end at 3:45 p.m., with a forty-five (45) minute duty-free lunch period.

Because of required travel and home visits, the itinerent teachers will have a flexible schedule. Total weekly workload hours will remain equal to those of other faculty.

Part-time faculty unit members will work only that portion of the day/week which is equal to their percentages of a full-time unit member. Part-time faculty unit members may be required to participate in faculty meetings or scheduled professional activities if such meetings or activities fall during their assigned working hours.

If in the judgment of the administration, it is necessary that a part-time faculty unit member attend professional activities which are scheduled during other than the faculty unit member's normal working hours, a part-time unit member may be required to attend and will be compensated for the additional working hours.

An effort will be made to assign committee responsibilities equitably. Committee assignments which will require attendance beyond the faculty unit member's workday will be discussed with the faculty unit member prior to assignment.

### 6.2 WORKDAY - SOUTH DAKOTA SCHOOL FOR THE DEAF

The workday for the faculty unit members on the campus of the SDSD will commence at 8:00 a.m. and end at 3:45 p.m., with a forty-five (45) minute duty-free lunch period.

The audiologists' workday will commence at 8:00 a.m. and end at 4:30 p.m.

Faculty unit members may volunteer for noon duty and will be paid at the rate of $5.50 for each lunch period worked. If volunteer assistance for noon lunch duty is insufficient to fill the noon lunch hour schedule, the Superintendent will have the right to schedule other faculty unit members to lunch duty on a reasonably equitable basis to fill the balance of the noon lunch period. Involuntarily scheduled unit members will be paid at the same rate as those who were voluntarily assigned to noon duty. The workday will then end at 3:30 p.m. and preparation time will not be less than ninety-five (95) minutes for that semester.

Part-time faculty unit members will work only that portion of the day/week which is equal to their percentages of a full-time unit

member. Part-time faculty unit members may be required to participate in faculty meetings or scheduled professional activities if such meetings or activities fall during their assigned working hours.

If in the judgment of the administration, it is necessary that a part-time faculty unit member attend professional activities which are scheduled during other than the faculty unit member's normal working hours, a part-time unit member may be required to attend and will be compensated for the additional working hours.

Independent living faculty, physical education teachers and itinerent teachers will have a flexible schedule. Weekly workload hours will remain equal to those of other faculty.

An effort will be made to assign committee responsibilities equitably. Committee assignments which will require attendance beyond the faculty unit member's workday will be discussed with the faculty unit member prior to assignment.

6.3 PROFESSIONAL ACTIVITIES

The administration at the special schools bears the responsibility for determining the necessity for and structuring of professional days activities.

Each school will establish a professional days activities committee comprised of up to three (3) faculty unit members to be selected by the COHE chapter president and up to three (3) administrators to be appointed by the superintendent. The committee will be responsible for providing professional days program recommendations to the superintendent and for evaluating the content and format of the professional days activities.

6.4 GENERAL FACULTY MEETINGS

The administration at the special schools bears the responsibility for determining the necessity for general faculty meetings. Such meetings will culminate no later than 4:00 p.m. Faculty unit members may make recommendations to the administration concerning the agenda.

6.5 SUBSTITUTES

It will be the responsibility of the administration at the special schools to secure substitutes when deemed necessary by the administration. Faculty unit members will not be required to assume responsibilities for students of absent faculty, except in unforeseen situations of less than one-half day duration, when the administration cannot cover the class. Where regular faculty unit members are utilized as substitutes, such assignments will be made equitably.

Scheduling for Individual Educational Program (IEP) meetings will attempt to avoid use of faculty unit members as replacement faculty; however, faculty unit members may be used if necessary.

6.6 PREPARATION PERIODS

Preparation periods are provided to allow faculty unit members to prepare their instructional plans and materials. If a faculty unit member needs to leave the campus for a class-related activity or emergency, the faculty unit member will sign out at the principal's office before leaving and sign in upon returning to the campus.

Class preparation time at the School for the Visually Handicapped will not amount to less than eighty (80) minutes per workday. Part-time faculty unit members' class preparation time will be prorated.

Class preparation time at the School for the Deaf will not amount to less than one hundred ten (110) minutes per workday, except for affected faculty in grades 9 through 12, who will have no less than one hundred four (104) minutes of planning time. Part-time faculty unit members' class preparation time will be prorated.

Faculty unit members will have input into the scheduling of pre-staffing and IEP meetings that will involve their attendance. An effort will be made to limit pre-staffing and IEP meetings to no more than two (2) per week for any one (1) faculty unit member.

6.7 WORKDAY CHANGES

Because of student program requirements, established curricula and classroom work which cannot be scheduled during the normal workday, some faculty unit members may need to have a workday other than between the hours of 8:00 a.m. through 3:45 p.m. The administration and the local COHE executive committee will meet and agree on changes in the workday prior to implementation. Daily workload hours will remain equal to those of other faculty. If in the foregoing circumstances no agreement is reached, the superintendent will determine the workday for those faculty unit members to be affected. In such latter event, any such affected faculty unit member may grieve the determination of the superintendent under Division I, Article VI, but such grievance shall not act to delay the implementation of the change.

## VII. WORKING CONDITIONS

### 7.1 UNIT MEMBER OFFICES

The administration at the special schools will provide faculty unit members with either private offices (if available), lockable desks, or a lockable file for the security of private and confidential materials and articles.

## VIII. LEAVES

### 8.1 SICK LEAVE

Full-time faculty unit members who have contracts for the full academic year will accrue nine (9) hours of sick leave credit per month, except during the months of September and March, when eleven (11) hours are credited. If faculty unit members are paid for less than a full pay period, accrual will be prorated. Faculty unit members who are employed fifty percent (50%), but less than one hundred percent (100%), during the full academic year, will earn sick leave on a prorated basis of the above. Accumulation will be unlimited.

### 8.2 ANNUAL LEAVE

Faculty unit members who have ten (10), eleven (11), or twelve (12) month appointments, exclusive of summer session appointments, and who are required to perform regular duties during student vacation periods, shall accrue annual leave credit on the following schedule for each month of service:

| Years of Service | Rate of Accrual |
|---|---|
| 0 through 15 | 10 hours per month |
| Over 15 | 13 hours per month except during September and March when 15 hours are accrued |

Accrual begins on the faculty unit member's date of employment. No annual leave may be taken until the faculty unit member has completed six (6) months of service. The total accrual at the end of any one (1) month may not exceed that which the faculty unit member may earn in two (2) years of service. When a faculty unit member is on annual leave and is terminating employment, no other type of leave may be used.

### 8.3 PROFESSIONAL LEAVE

Faculty unit members at the special schools may be granted professional leave. The administration will develop a procedure to be included in the faculty handbook by which the faculty unit member may apply for professional leave. The institutional COHE chapter may submit recommendations for this procedure.

## IX. SALARY PROVISIONS

### 9.1 SALARY SCHEDULE POLICIES

Faculty unit members at the special schools will be placed upon the salary schedule as set forth in Appendix J according to the following policies effective with their 1985/86 employment contracts:

1. Faculty unit members who are employed full-time for nine (9) months will be placed in the lane and on the step of the salary schedule, as set forth in Appendix J, which corresponds to their level of training and experience (one step credit for each year of 50% time or more of experience). If the faculty unit member's contract is for a different percentage of time or number of months than was in effect in the prior fiscal year, the base salary will be adjusted to reflect such changes prior to application of salary increases.

2. Faculty unit members with appointment contracts of more than nine (9) months will receive additional compensation based upon proration of their appropriate nine (9) months salary level.

3. Faculty unit members employed for fifty percent (50%) time or more, but less than full-time will be placed in the lane and on the step of the salary schedule, as set forth in Appendix J which corresponds to their level of training and experience (one step credit for each year of 50% time or more of experience), and will receive the salary for the appropriate step, multiplied by the percentage of full-time employment as indicated in their appointment contract. Faculty unit members employed less than fifty percent (50%) time will receive credit for advancement on the salary schedule. To be counted for advancement on the salary schedule, such employment must be for at least a full semester. Advancement on the schedule will occur when the part-time experience is the equivalent of one year of 50% time or more of employment.

4. It is the intent of the parties that faculty unit members paid from federal or other restricted fund sources will be placed on the salary schedule by the same process used for faculty unit members paid from direct operating funds. It is recognized that this provision will be implemented only if funds are available from the appropriate federal or other restricted fund sources and the institution receives approval for additional spending authority or transfer authority necessary to implement this provision.

5. Faculty unit members will be awarded one (1) full year of prior experience credit for each year of teaching experience at a school whose primary mission is, in the case of SDSVH, special education for the visually handicapped and in the case of SDSD, special education for the deaf. Faculty unit members will be awarded one (1) full year of prior experience credit, up to a maximum of eight (8) years, for each two (2) years of teaching experience at any other institution. If the faculty unit member establishes that the experience was comparable to that provided in the current assignment, one (1) year of credit will be awarded for each year of appropriate experience, without limit as to the number of years of credit. Faculty unit members, at the time of assuming the position, may apply to the superintendent for recognition of previous non-teaching experience related to the position. One (1) year of credit may be granted for each two (2) years of non-teaching experience, up to a maximum of eight (8) years. The superintendent will notify the faculty unit member and the local COHE president in writing of the decision.

6. Faculty unit members are encouraged to earn additional credits each year toward advancement on the salary schedule.

7. Notification, in writing, of intent to acquire educational requirements which would lead to a lane change will be provided to the administration no later than April 1. The faculty unit member will provide verification of the completion of education requirements to the administration no later than September 1, and an official transcript by October 15. If such verification is not provided, the faculty unit member will be returned to the appropriate lane. All credits are to be earned from a degree granting accredited institution and evidence of credits earned shall be in the form of an official transcript, grade report or a signed document from the instructor.

8. Faculty moving to BA+15, MA+15, and MA+30 must present evidence of having obtained the equivalent number of semester hours.

9. Six (6) of the fifteen (15) hours applicable to the BA+15 lane may be at the undergraduate level and are to be earned after the receipt of the BA degree.

10. All hours applicable to the MA+15 and MA+30 lanes shall be graduate hours and are to be earned after receipt of a master degree.

11. A minimum of eight (8) of the hours earned toward the next lane shall be in an educational program related to an area in which the teacher is employed.

9.2 CERTIFICATION

1. Faculty unit members who have provided proof of current certification to the superintendent within two (2) weeks of the beginning of a semester or within such additional time as circumstances, in the discretion of the superintendent may warrant, will be paid on the basis of an additional $636 per fiscal year or as adjusted by legislative action or reopening of negotiations. Midyear or midterm certification may be recognized by the superintendent on a prorated basis.

2. "Certification" as used in this article will mean, at the School for the Deaf, current certification by the Council on Education of the Deaf, (CED-Provisional or CED-Professional), and at the School for the Visually Handicapped, current certification by the Association for Education and Rehabilitation for the Blind and Visually Impaired (AER level AA or level AAA) or college certification in orientation and mobility. Clinicians who hold a Certificate of Clinical Competence from the American Speech and Hearing Association in their respective areas (Audiology-CCC-A; Speech-CCC-SP) are also recognized as certified. No faculty member will be paid for more than one certification.

3. It is the intent of the parties that faculty unit members paid from federal or other restricted fund sources will be paid for certification at the same rate as faculty unit members paid from direct operating funds. It is recognized that this provision will be implemented only if funds are available from the appropriate federal or other restricted fund sources and the institution receives approval for additional spending authority or transfer authority necessary to implement this provision.

4. Notification, in writing, of intent to acquire certification will be provided, by the faculty unit member, to the administration no later than April 1.

9.3 EXTRACURRICULAR COMPENSATION

The authorized voluntary assumption by faculty unit members of the following extracurricular activity supervision at the special schools, to be performed outside the regular working hours, will be compensated in accordance with Appendix K.

If a special school decides to establish additional compensated extracurricular activities, or if a vacancy cannot be filled for the compensation on the schedule, the superintendent will determine the appropriate compensation for the vacancy and will, prior to the implementation, inform the president of the COHE chapter of the plans and compensation for the extracurricular activity. The vacancy then will first be offered to suitable applicants from the faculty unit before advertising the position to outside applicants.

Executed this 1st day of July, 1987.

South Dakota Board of Regents

Chairperson, Board of Regents

Roger Schinness
Executive Director,
Board of Regents

Ronald W. Binks
Chief Negotiator

Board of Regents Negotiations Team:

Roger Schinness
Bill Krikac
R. Norman Orava

Council of Higher Education

President, COHE

Ron Avery, UniServ Director
Chief Negotiator

COHE Negotiations Team:

Ron Avery
Charles Estee
Jane King
Ted Kneebone
Phil Plumart
Pat Popelka

May 22, 1987

APPENDIX A

BARGAINING UNIT COMPOSITION

The bargaining unit includes:

All full-time and regular part-time [a regular part-time employee is one employed in the current semester who is employed fifty percent (50%) but less than one hundred percent (100%) of the normal full-time load] Instructional-research faculty in colleges and universities, the Agricultural Experiment Station, Cooperative Extension Service, Auxiliary Services, the South Dakota School for the Visually Handicapped and the South Dakota School for the Deaf, who are not supervisors as defined in 47:02:01:01 (12). The unit does not include the Medical School, the Law School, or the Institute of Atmospheric Sciences.

The unit excludes Deans, Assistant Deans and Associate Deans; Directors, Assistant Directors and Associate Directors; Department Chairpersons, Assistant Chairpersons and Associate Chairpersons; Department Heads, Assistant Department Heads and Associate Department Heads; Principals, Assistant Principals and Associate Principals; Superintendents, Assistant Superintendents and Associate Superintendents; Program Managers, and others who are supervisory and managerial, and also emeritus faculty; teaching and research assistants, teaching fellows and graduate assistants, adjunct or clinical faculty; county agents, county home economists and ROTC personnel.

May 22, 1987

APPENDIX B

GRIEVANCE FORM - STEP 1

South Dakota Board of Regents and the Council of Higher Education (COHE)

Institution: _____ Date: _____

Name: _____

Dept: _____

Address: _____

_____

Provisions of the agreement violated:

Division(s): _____
Article(s): _____
Section(s): _____

Statement of grievance:

Remedy desired:

Name of person to whom this grievance is addressed: _____
(This must be the administrator at the lowest level who has or may have the authority to resolve the grievance.)

Date of grievance or the date that the faculty member had knowledge of its occurrence: _____

Signature of grievant: _____

May 22, 1987

APPENDIX C

GRIEVANCE FORM - STEP 2

South Dakota Board of Regents

Institution: _____ Date: _____

Name: _____

Department or division: _____

Address to which mailings pertaining to this grievance will be sent:

_____

_____

Provision(s) of agreement violated:

Division(s): _____
Article(s): _____
Section(s): _____

Statement of grievance (include date of acts or omissions complained of):

Remedy desired:

Evidence of informal adjustment attempted:

I will be represented in this grievance by:

CONE ____ Legal Counsel ____ Myself ____

Signature of grievant: _____

Date of filing: _____

Received by: _____

Position title: _____

May 22, 1987

APPENDIX D

GRIEVANCE REVIEW FORM - STEP 3

South Dakota Board of Regents

Date: _____

I hereby request that the executive director review the attached decision made in connection with the attached grievance because:

I received the Step 2 decision on _____ (date).

I will be represented in this grievance by:

COHE ____ Legal Counsel*____ Myself____

Signature of grievant: _____

Date of filing: _____

Received by: _____

Position title: _____

*If represented by legal counsel, indicate name, address and telephone number below:

_____

_____

_____

_____

May 22, 1987

## CODE OF PROFESSIONAL CONDUCT

With full recognition that there exists traditionally recognized and accepted standards of conduct for faculty within the regental system, the following rules of conduct, though not all inclusive, shall be deemed to be beyond such recognized standards:

1. For other than tenured faculty, a failure to correct deficiencies in performance or a failure to comply with a constructive plan developed under the terms of this agreement;

2. For tenured faculty, a failure to correct significant deficiencies in a single constructive plan that has been imposed within five (5) years of a prior constructive plan and where there were significantly similar deficiencies noted or addressed; or a contumacious and willful refusal to abide by a single constructive plan within the time therein prescribed;

3. A substantial breach of recognized published standards of professional ethics;

4. Conviction of any felony or the conviction of a misdemeanor involving moral turpitude;

5. Unauthorized absence from duties without prior notification or justifiable cause or excuse for the absence;

6. The unauthorized possession or use of alcoholic beverages, or the possession of marijuana or controlled substances, while on duty or on academic premises;

7. The wrongful refusal or failure to follow or comply with lawful orders or instructions of a superior, unless such instruction or order shall be in contravention of the applicable provisions of this agreement, statute or regulation;

8. The use of alcohol, marijuana, or other controlled substances which significantly impairs the faculty unit member in the performance of his duties;

9. Theft of state owned or controlled property;

10. Incitement of, or participation in, a strike as proscribed by SDCL Chapter 3-18;

11. Sexual harassment of students or employees, for which the board may be vicariously responsible under law;

12. Intentionally and wrongfully counseling, inciting, or participating in validly proscribed student or faculty unit activity;

13. Any substantial or irremedial impairment of the ability of a faculty unit member to perform assigned duties.

May 22, 1987

# PROFESSIONAL STAFF EVALUATION FORM

## TO BE COMPLETED BY IMMEDIATE SUPERVISOR

1. Submitted as staff evaluation for period of _____

OR

2. Submitted as a recommendation for (check those applicable):
   a. Contract renewal _____ or Nonrenewal _____ (check one)
      _____ Tenure track contract (_____ contract) [This will be the number of contracts toward tenure.]
      _____ Term contract from _____ (date) to _____ (date).

   b. _____ Tenure
   c. _____ Promotion to _____
   d. _____ Other

## PART A

## TO BE COMPLETED BY STAFF MEMBER

3. Background information:

Name: _____
Institution: _____
Department: _____
Date: _____
Academic rank: _____ and date granted _____

| Degrees | Date | Where Earned | Field |
|---|---|---|---|

Additional academic training (study beyond last degree):

Experience (in reverse chronological order with experience at your present institution first):

| Dates | Employer | Position or Faculty Rank | Type of Experience | #Years |
|---|---|---|---|---|

4. Attach the position description given to you at the time of initial appointment, or as modified by your supervisor due to changing program needs.

5. Indicate your assignment distribution:

   Instruction ___% Scholarly Activities ___% Service ___% Advising ___%

6. State your responsibilities, duties, and/or tasks as you see them related to your present position description.

7. Indicate what your major performance objectives were for the current contract year (or this evaluation period, if applicable).

8. List your significant contributions as appropriate:
(Appendix G of the BOR-COHE agreement contains a sample list)

   a. Teaching or cooperative extension activities
   b. Research and/or scholarship
   c. Service
   d. Advising

9. Indicate what your proposed major performance objectives are for the next contract year (or next evaluation period, if applicable). Include proposed checkpoints for regular discussion with your supervisor.

PART B

TO BE COMPLETED BY IMMEDIATE ADMINISTRATIVE SUPERVISOR

10. Professional performance:

   a. Indicate your assessment of the staff member's accomplishment of the professional responsibilities and duties and the performance expectations of this position. State specific areas of strength and/or specific areas of weakness as related to the position description or performance objectives (items 5-8 above).

b. What is your response to the staff member's major performance objectives for the next contract year (item 9 above)?

Signature of Supervisor Date

11. Staff member's comments:

I have reviewed these comments and ratings with my immediate supervisor. I have been informed of my particular responsibilities for accomplishing department, college, and university objectives through a position description. In addition, I would like to add:

Signature of Staff Member Date

APPENDIX G

REPRESENTATIVE LIST OF FACULTY UNIT MEMBER RESPONSIBILITIES

HIGHER EDUCATION INSTITUTIONS

INTRODUCTION

A representative list of faculty unit member responsibilities in the areas of teaching, advising, research and scholarship, and service follows.

Teaching:

Teaching may include the following activities:

(1) Classroom instruction, preparation and supervision;
(2) Field-based or off-campus instruction;
(3) Laboratory design, preparation, instruction, supervision, and other associated responsibilities;
(4) Student teacher supervision and evaluation;
(5) Measurement of student performance, including the preparation, administration, grading and evaluation of tests, papers, examinations, and reporting of grades;
(6) Conference with and academic advisement of students outside of their registration needs;
(7) Coordination, supervision, and evaluation of student research beyond regular course assignments, including research for a graduate degree;
(8) Coordination and supervision of student activities directly related to the academic program such as directing the debate team or supervising the intramural athletic program;
(9) Coordination and supervision of academic programs;
(10) Experiments in teaching methods and teaching-oriented research;
(11) Writing letters of recommendation for students;
(12) Selection and procurement of books, films, and other materials for classroom or laboratory use;
(13) Evaluation periodically of library holdings and recommendations of books to be ordered by the library;
(14) Development of new courses and programs of study;
(15) Other similar activities.

Advising:

(1) Advisement and counseling of students;
(2) Service as a member of a graduate student's research project committee.

Research and Scholarship:

Research and scholarship may include the following activities:

(1) Research which leads to the discovery of new knowledge or new applications of existing knowledge;
(2) Research intended to lead to publication in scholarly journals or books;

(3) On-going reading and research to maintain proficiency and growth in one's field of professional specialization;
(4) In the case of fine and performing arts, regular practice and performance to maintain and develop professional skills;
(5) Research intended to lead to the preparation and preservation of a scholarly paper to a professional society, or a paper in one's field of specialization to any group;
(6) Editing professional journals and service as a referee of manuscripts that have been submitted to a journal;
(7) Reviewing texts in one's field of specialization for publishers;
(8) Holding membership or an office in professional associations;
(9) Attendance and participation in meetings, conferences and conventions of professional associations;
(10) Writing proposals for financial support of research or other projects, including academic institutes or workshops;
(11) Consulting with other faculty on research proposals or projects;
(12) Institution-sponsored research;
(13) Discipline-connected consultation or discipline-connected community service; and
(14) Other similar activities.

Service:

Service may include the following activities:

(1) Service on institutional committees;
(2) Service on professional association committees;
(3) Service on academic senate and its committees;
(4) Service on institutionally-affiliated committees;
(5) Participation in institutionally-sponsored activities to recruit students;
(6) Interviewing and screening candidates for faculty and staff appointments;
(7) Coordination, advisement and supervision of student organizations or student activites not directly related to the academic program;
(8) Participation in sponsored community service or community projects;
(9) Taking inventory of equipment and supplies;
(10) Service as the designated representative of the campus;
(11) Participation in community-sponsored activities within the campus such as the United Fund drive;
(12) Service to state and local governments; and
(13) Other similar activities.

APPENDIX H

DUES DEDUCTION AUTHORIZATION FORM

I authorize the South Dakota Board of Regents to deduct from my pay membership dues and uniform assessments, if any, established by the Council of Higher Education. The deduction will begin with the first full pay period after receipt of this authorization or _____ (date), whichever occurs later; provided it is received by the tenth day of the month in which authorization is authorized to begin. I authorize and direct the Board of Regents to pay over the sum deducted to COHE.

This authorization will continue until it is either 1) revoked by me by completion and submission of a dues deduction cancellation form [Appendix I], or 2) the cessation of my employment, or 3) the cessation of my inclusion in the bargaining unit. I agree to pay to COHE any outstanding balance of unpaid membership dues prior to August 31.

I hereby waive all rights and claims for said monies paid in accordance with this authorization.

Name_____ S.S.#_____

Home Address_____

City_____ State_____ Zip _____

Department_____

Institution_____

Date_____ Signature_____

Date received_____

May 22, 1987

APPENDIX I

DUES DEDUCTION CANCELLATION FORM

I hereby cancel my COHE dues deduction authorization, effective with the _____ (month/year) payroll period. I agree to pay to COHE any outstanding balance of unpaid membership dues prior to August 31.

Name_____ S.S.#_____

Home address_____

City_____ State_____ Zip _____

Department_____

Institution_____

Date_____ Signature_____

Date received by payroll office_____

NOTE: Payroll office will forward a copy of the completed form to the president of the institutional COHE chapter within five (5) days following receipt.

May 22, 1987

## SALARY SCHEDULE FOR SDSVH & SDSD

| Step | BA | BA+15 | MA | MA+15 | MA+30 |
|---|---|---|---|---|---|
| 1 | $13,750 | $14,450 | $15,250 | $15,750 | $16,250 |
| 2 | 14,163 | 14,884 | 15,708 | 16,223 | 16,738 |
| 3 | 14,587 | 15,330 | 16,179 | 16,709 | 17,240 |
| 4 | 15,025 | 15,790 | 16,664 | 17,210 | 17,757 |
| 5 | 15,476 | 16,264 | 17,164 | 17,727 | 18,290 |
| 6 | 15,940 | 16,752 | 17,679 | 18,259 | 18,838 |
| 7 | 16,418 | 17,254 | 18,209 | 18,806 | 19,403 |
| 8 | 16,911 | 17,772 | 18,756 | 19,371 | 19,985 |
| 9 | | 18,305 | 19,318 | 19,952 | 20,585 |
| 10 | | 18,854 | 19,898 | 20,550 | 21,203 |
| 11 | | 19,420 | 20,495 | 21,167 | 21,839 |
| 12 | | 20,002 | 21,110 | 21,802 | 22,494 |
| 13 | | 20,745 | 21,743 | 22,456 | 23,169 |
| 14 | | | 22,395 | 23,129 | 23,864 |
| 15 | | | 23,067 | 23,823 | 24,580 |
| 16 | | | 23,946 | 24,538 | 25,317 |
| 17 | | | | 25,274 | 26,076 |
| 18 | | | | 26,032 | 26,859 |
| 19 | | | | 26,813 | 27,665 |
| 20 | | | | | 28,494 |
| 21 | | | | | 29,349 |
| 22 | | | | | 30,230 |
| OFF SCALE | | | | | |
| | | 22,526 | 29,289 | 29,696 | 30,832 |
| | 17,418 | 24,187 | 24,664 | | |
| | | 25,581 | 24,664 | | |
| | | 26,980 | | | |
| | | 18,507 | | | |
| | | 21,367 | | | |
| | | 21,367 | | | |
| | | 21,367 | | | |

Faculty unit members will advance one step on the salary schedule effective with their FY88 employment contract.

Those faculty unit members who were on the last step of a lane or were off scale during FY86 and/or FY87 will receive a 3% salary increase for FY88.

Those faculty unit members who were off scale during FY87 and who advance to another lane on the schedule will advance to the appropriate step on the new lane for their years of experience. If their experience is greater than the number of steps available on the new lane, they will be off scale on the new lane and their salary will be calculated as follows: The difference between the new lane and the old lane at the last step on the old lane will be added to the faculty unit member's FY87 salary. The sum will be increased by 3%.

May 22, 1987

APPENDIX K

SPECIAL SCHOOLS EXTRACURRICULAR COMPENSATION

| SDSVH | | SDSD | | |
|---|---|---|---|---|
| | | | Head | Assistant |
| Track | $ 695 | Track | $ 811 | |
| Drama/Declam | $ 463 | Basketball | $1,586 | $811 |
| Goalball | $1,042 | | | |
| Newspaper | $ 695 | Volleyball | $ 811 | |
| | | Cross Country | $ 811 | |
| | | Cheerleading Sponsor | $ 580 | |
| | | Awareness Group Sponsor | $1,071 | |
| | | Drama | $ 482 | |
| | | Newspaper | $ 695 | |
| | | Weight-lifting | $ 241 | |

May 22, 1987

APPENDIX L
BHSC

Black Hills State College
1200 University
Spearfish, South Dakota 57783-1797

Office of the President
College Station Box 9500
(605) 642-6111

August 19, 1987

Mr. Ron Banks
3202 W. Main Street
Rapid City, SD 57701

Dear Ron:

Roger Schinness called and asked for written guidelines on the distribution of discretionary/merit monies. It seems we've plowed this road before but I'll try again.

Basically we used Appendix F, Part A of the COHE/BOR contract as a guideline. Each faculty member negotiates with his division chair and indicates the percentage weighting he/she wishes to have assigned to instruction, scholarly activities, service and advising. From that point it is a recommendation from the chairman to the academic vice president to the president.

Also, if you recall the Presidents went through an exercise with Bill Marshall which produced the enclosed document.

I don't foresee that you will ever be able to produce what Avery wants. Discretionary is discretionary and merit is merit. That, to me, means that there will never be a completely objective process devised. There will be judgment, based on the evidence available at the time. That's the way I want it! That does not mean it is an entirely subjective exercise. We use all of the attached guidelines and when possible any evaluative instrument we have at our disposal, i.e. student evaluations on teaching.

I'm sure by now you're saying that #?!X:#/ didn't help me at all. I tried! Good luck!

Cordially,

Clifford M. Trump
President

CMT:aw

Enclosure

cc: Dr. Schinness

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Black Hills State College is an equal opportunity employer

PRESIDENTS AND SUPERINTENDENTS

May 29, 1987

The awarding of FY88 salary funds appropriated by the Legislature is to be based on market and discretionary factors as follows:

Market

Various national and regional studies shall be used to provide mean target salaries by academic discipline and rank. Studies used include the Oklahoma, CUPA, National Engineering and AAUP.

Discretionary

To allocate and distribute at its discretion any funds allocated and appropriated for discretionary distribution purposes within the following guidelines:

a. Teaching abilities;
b. Research and scholarly activities;
c. Demonstrated performance of items a and b above;
d. Market adjustment considerations;
e. Experience in duties and responsibilities assigned;
f. Community and other public service;
g. Educational levels;
h. Addressing inequities

Please call my office with any comments in regard to the above.

William R. Marshall
Director of Financial Affairs
Board of Regents

5-29-87

CC: Landis
Sue

APPENDIX M
DSC

The following guidelines will be used in distribution of the salary policy.

Market

70% of the salary policy will be distributed using individual discipline and rank statistics obtained from the CUPA study. The objective of the distribution will be to match the mean of the market portion of the salary policy with the mean of the differences between the market salary and actual salary.

Discretionary

30% of the salary policy will be distributed by recommendation from Division Heads through the Vice President within the following guidelines.

a. Teaching abilities;
b. Research and scholarly activities;
c. Demonstrated performance of Items a and b above;
d. Market adjustment considerations;
e. Experience in duties and responsibilities assigned;
f. Community and other public service;
g. Educational levels;
h. Addressing inequities.

Please contact me if you have any questions concerning the process to be used in allocation of the 1987 salary policy.

Sincerely,

Richard J. Gowen
President

RJG/ss

NARRATIVE TO 1987-88 SALARY DISTRIBUTION

The 1986-87 salary distribution was prepared consistently with the intent of the parties to the collective bargaining agreement. The parties agreed to distribute approximately seventy percent of salary augmentation funds through mechanisms driven by market factors. Approximately thirty percent of the salary augmentation funds could be distributed at the discretion of the board of regents. The parties agreed further that campus level committees at each of the several institutions governed by the board of regents should have the responsibility to develop appropriate market mechanisms for local use. The Northern State Institutional Agreement Management Committee met on May 29 and June 1, 1987, to negotiate a suitable market mechanism. The results of these discussions are as follows:

I. Market - 71% of the available salary monies

- A. Comparability - 45% of the available salary monies
- B. Degree - 12% of the available salary monies
- C. Research - 7% of the available salary monies
- D. Teaching - 7% of the available salary monies

II. Discretionary - 29% of the available salary monies

- A. Teaching - 18% of the available salary monies
- B. Service - 5% of the available salary monies
- C. Research - 6% of the available salary monies

DEFINITIONS

The categories shown on the printout reflect the following determinations:

F.T.E. = full time equivalence. This factor becomes significant only when an individual holds less than a 1.00 F.T.E. In that case, persons are limited to increments attributable to the instructional portion of their appointment. E.g., persons on a .5 F.T.E. academic appointment are eligible to receive half the raise that would be theirs were their salary wholly determined by the system.

Contract Amount = actual 1986-87 salary or, for individuals promoted effective FY88, 1986-87 salary plus the contractual percentage for promotion.

Group Difference = difference between national average salary in discipline and at rank and average Northern State salary in discipline and at rank.

% Comp = dollar amount based upon ten and one half percent of difference between average salaries nationally and average salaries at Northern State. The percentage reflects the amount that would suffice to distribute available monies through the formula. This mechanism distributed 45% of the salary augmentation funds.

Degree - dollar amount based upon an additional percentage of difference between average salaries distributed to those individuals who have earned terminal degrees and hence have greater marketability than their colleagues who lack full credentials. The percentage allowed under this category varies according to rank as follows: assistant professors 6.5%, associate professors 4%, and full professors 2%. These variations reflect the diminution in the value of the degree in the market as individuals move through the ranks. This mechanism distributed 12% of the salary augmentation funds.

Research - dollar amount based upon individual research activity. Dr. Flickema developed a set of criteria (attached) to apportion monies based upon the type of research activity, e.g., publication, performance or work in progress, the manner of presentation, e.g., national publication, regional juried competition or state professional gathering, and the frequency of professional activity, e.g., number of works in progress, publications or presentations. Information about the accomplishments of individual faculty was drawn from information the faculty submitted to the office of the vice president for academic affairs. This mechanism distributed 13% of the salary augmentation funds (7% in the market category and 6% in the discretionary category).

Research Groupings

| Group | Points | Market (per person) | Discretionary (per person) |
|---|---|---|---|
| 1 | 275 to 784 | $162 | $135 |
| 2 | 202 to 247 | $144 | $120 |
| 3 | 145 to 192 | $123 | $105 |
| 4 | 100 to 133 | $108 | $90 |
| 5 | 80 to 96 | $90 | $75 |
| 6 | 69 to 72 | $72 | $60 |
| 7 | 50 to 65 | $54 | $45 |
| 8 | 25 to 40 | $36 | $30 |
| 9 | 5 to 20 | $18 | $15 |
| 10 | 0 | 0 | 0 |

Teaching - flat dollar amounts distributed to faculty who distinguished themselves in teaching. The top twenty-five percent of the faculty, as determined by the vice president for academic affairs based upon information supplied by the chairs and deans, receive double the amounts of the middle 65%. The lowest ten percent receive nothing. This mechanism distributed 25% of the salary augmentation funds (7% in the market and 18% in the discretionary categories).

Service = flat dollar amount distributed to faculty who distinguished themselves in service as defined under the collective bargaining agreement. The top ninety percent of the faculty, as determined by the vice president for academic affairs, based upon information supplied by the schools, receive equal amounts. The lowest ten percent receive nothing. This mechanism distributed 5% of the salary augmentation funds.

New Salary = 1986-87 salary derived from forgoing.

$ Inc = dollar amount of increase.

% Inc = percentage of increase over actual 1985-86 salary.

Fact Sheet
Market Value: Research/Scholarship
May 15, 1986 through May 15, 1987

I. Regulations

A. All (except on the local level) entries on this sheet must be accompanied by verification. Verification can be established by submitting a copy of the finished product, the table of contents and cover page from a journal, manuscripts in progress, correspondence, programs, and the like.

B. Refereed means the work has been reviewed by a professionally recognized peer group in the discipline.

C. Except in unusual cases, participation in the performance category (II—A.2) is restricted to music, art, and theatre faculty.

D. An entry may be counted in only one category in a given year.

E. An entry used this year cannot be used again in the same category, except in the submissions (II-B) and research in progress categories (II-C), and in both these categories entries cannot be counted for more than two consecutive years in the same category.

II. Research/Scholarship Categories

A. Published Research

1. Scholarly Book (Refereed) _____ (50-100 points)

| | Internatl./ National | Regional | State (Limit) | Local (Limit) |
|---|---|---|---|---|
| 2. Article, Textbook, or Chapter in Book (Refereed) | 50_____ | 40_____ | 20_____ (40 max) | 10_____ (20 max) |
| 3. Performance (presentations, exhibits, concerts readings | 45_____ | 35_____ | 15_____ (30 max) | 5_____ (10 max) |
| 4. Papers (presented) | 40_____ | 30_____ | 15_____ (30 max) | 5_____ (10 max) |

B. Submissions

| | | | |
|---|---|---|---|
| 1. Book (manuscript) submitted to refereed press | 40 | _____ | points |
| 2. Textbook (manuscript) submitted to refereed press | 25 | _____ | points |
| 3. Article submitted to refereed journal | 10 | _____ | points |
| 4. Paper submitted for presentation: Internatl/Natl | 10 | _____ | points |
| Regional/State | 5 | _____ | points |
| Local | 2 | _____ | points |

C. Research in Progress

| | | | |
|---|---|---|---|
| Undertaking such as manuscripts, papers, book reviews, refereed for publication | 5 | _____ | points |

D. Funding

| | | | |
|---|---|---|---|
| 1. Funding by Faculty Research Council | 5 | _____ | points |
| 2. Research/Grant Submission | 2 | _____ | points |
| 3. Successful grant funding for research from outside agency: Amount $_____ (1 point per $1000 funding; points to be divided equally for multiple authors/directors) LIMIT | 50 | _____ | points |

APPENDIX O
SDSMT

SOUTH DAKOTA
SCHOOL OF MINES
AND TECHNOLOGY

RAPID CITY, SOUTH DAKOTA 57701

15 June 1987

Dr. Roger Schinness
Executive Director
Board of Regents
Kneip Building
Pierre, SD 57501

Dear Dr. Schinness:

In 1987, the Legislature appropriated a 3% salary policy pool for faculty salaries. Negotiations with CCHE provided the general guidelines for the salary policy distribution. With that in mind, we undertook the salary study with one primary goal: to ensure that each faculty member had equitable access to salary policy.

Our first step was to segment the salary policy pool into three components. The first component was the pool for vacant positions. We simply set aside 2.1% of the base for each vacant position. Second was the market adjustment component. This equaled 70% of the pool remaining after the vacant positions were considered. Third was the merit adjustment component which equaled the remaining 30% of the pool.

To distribute the market portion of salary policy, we first had to determine the relationship between our faculty salaries and salaries that existed "in the market". A corresponding salary for each faculty member was taken from the 1986-87 Faculty Salary Survey by Discipline prepared by the Office of Institutional Research at Oklahoma State University. Each SDSM&T faculty member's salary was converted to a nine-month base and compared with the corresponding salary from the survey. This comparison provided a percentage distance from the market. That percentage distance was rounded to the nearest whole percentage point.

The actual formula for distribution was simple once two conditions were met. First, for those who equaled or exceeded their market salary, there was no market increase. Second, those who were 30% or more below the market, received a maximum increase of 3.13%. For those between 1% and 29% below market, the formula read like this:

% increase = % below market X .104389

The factor of .104389 was derived by making small changes in the factor until a number was found that allocated every dollar in the market pool.

To distribute merit increases, each Department Head was given a list of his/her faculty and a pool of money equal to 3% X 30% = 0.9% of those base salaries. The Department Heads determined the criteria for merit awards and made distribution decisions based on how each faculty member met the established criteria. Each Department Head was charged with awarding all of his/her available pool.

The awards made by the Department Heads were combined with the market awards to provide a total award.

Sincerely,

/s/
Richard J. Gowen
President

RJG/ap

South Dakota State University
Box 2201
Brookings, SD 57007-2098

APPENDIX P
SDSU

Vice President for Academic Affairs
(605) 688-4173

June 10, 1987

TO: Deans

FROM: Carol J. Peterson
Vice President for Academic Affairs

SUBJECT: Ideas for Distributing Discretionary Salary Dollars

Recently, I prepared the attached ideas for the president to use in a discussion at the System level. I made reference to these in the Deans' meeting June 8, 1987.

I am sharing these with you since they may be helpful to you as you establish your own rationale in collaboration with department heads for distribution of discretionary salary dollars.

CJP/h

cc: President Wagner
Vice President Powers
Director Tschetter

South Dakota State University
Box 2201
Brookings, SD 57007 2098

Vice President for Academic Affairs
(605) 688 4173

May 26, 1987

TO: Robert T. Wagner
President

FROM: Carol J. Peterson
Vice President for Academic Affairs

SUBJECT: Ideas for Criteria for Distribution of Discretionary Monies

A. Possible Reasons for Not Allocating Discretionary Money
1. Person is on a prescriptive plan.
2. Person is very new in system - e.g. beginning second six months or second year.
3. Person received very sizeable raise through formula adjustment and/or promotion increase. One could set a percentage or dollar limit; if reached no discretionary additions would be given.
4. Person is on leave of absence (need to be careful however so we do not penalize creative person or person seeking advanced credentials) that benefit the institution.
5. Person's salary is competitive relative to rank, specialty, longevity, etc.

B. Possible Reasons for Giving Discretionary Monies That Are Not Merit Per Se
1. Recognition of completion of terminal degree not adequately recognized by other salary provisions or by promotion.
2. Recognition of practice/professional expertise (e.g. clinical, professional, industrial, business) that is not adequately recognized by rank or formula mechanism.
3. Recognition of two masters degrees which recognize added expertise/knowledge that does not get recognized by rank or the formula.
4. Recognition of professional certification in a specialty area not recognized by rank.
5. Recognition of increased responsibilitynot adjusted through new title.
6. Recognition of vulnerability to being recruited away (market).

C. Possible Guidelines for Discretionary Dollars Based on Merit Criteria
1. Separate from applying a unified evaluation scale, merit might be awarded for:
   a. Completing advanced education or certification.
   b. Distinguished writing in recent year(s).
   c. Recent productive grant proposal writing.
   d. Distinguished professional service.
   e. Leadership in the department/college such as major role in accreditation self study, new program development, etc.
   f. Distinguished teaching marked by award or unusual

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recognition.
g. Other.

2. Possible sets of criteria for determining merit.
Example 1 (From Vice President for Administration's adapted PSE form)

*Meritorious: demonstrates exceptionally high standards of performance, accomplished major new direction/program/initiative, significant advancement in professional development, other outstanding accomplishments as noted on PSE and through other documents.

Solid performance: knowledgeable, meets objectives consistently and effectively, demonstrates good judgement and is professional in dealing with others as noted on PSE.

Needs development: meets some aspects of responsibilities at acceptable level but needs to improve as noted on PSE.

Unacceptable performance: major deficiencies in performance, significant improvement required as noted on PSE.

*Only persons who would receive merit.

Example 2 (adaptation of Tenure Standards from Chapter 5 of Regents Policy Manual)

A faculty member is to be considered for a recommendation for merit pay must receive at least a superior rating in two of the following three areas and at least an excellent rating in the third area:

1. Either of the following:
   a. If employed primarily as a teacher, a record of effectiveness as a teacher includes, but is not limited to, demonstrated competence and efficiency in a classroom or laboratory, the ability to communicate effectively with students, demonstrated skill in handling classroom and other duties related to teaching, and specific evidence of scholarship that manifests itself through contributions to improve understanding of the subject matter and of teaching methods. (Such a record may include, for example, a showing of the ability to impart knowledge, to excite students' interest in the subject matter, and to evoke response in students.)
   b. If employed primarily as a non-teacher, a record of effectiveness, efficiency and ability to perform assigned duties.
2. Demonstrated continuing professional growth related to the faculty member's discipline or program area as shown by a record of innovative scholarly research or creative activity resulting in publication or comparable productivity. This excellence will ordinarily manifest itself in the direct efforts of the faculty member, however, it may also manifest itself in the work of students.
3. Demonstrated record of effectiveness in service which may include, but is not limited to:

a. Interest and ability in advising students.
b. Membership and participation in professional organizations.
c. Ability to work with the faculty and students of the institution in the best interests of the Board and the people it serves, and to the extent that the job performance of the faculty member's administrative unit may not be otherwise adversely affected.
d. Service on institutional committees.
e. Recognition among colleagues for possessing integrity and the capacity for further significant intellectual and professional achievement.
f. Recognition and respect outside the higher education community for participation and service in community, state, or national activity.

In rating faculty for merit under the standards set forth in this section, the institutions and their respective administrative units will rate applicants as (1) "unsatisfactory", (2) "satisfactory", (3) "excellent" or (4) "superior."

Example 3 Use Appendix G "Representative List of Faculty Unit Member Responsibilities" and apply a rating scale similar to Example 2 above.

Example 4 Possible Evaluative Criteria - used in another situation by Vice President Peterson.

*Distinguished: performance that is clearly and demonstrably superior in all of the appropriate categories of the performance evaluation; a faculty member who lends true distinction to the department and institution.

*Meritorious: performance that is superior in most of the appropriate categories of the performance evaluation; a faculty member who is recognized as an asset to the department and institution.

Consistently Satisfactory: performance that is without significant deficiencies in most of the appropriate categories of the performance evaluation.

Mostly Satisfactory: performance that is satisfactory in the majority of the appropriate categories of the performance, but with identifiable deficiencies that require correction.

Unsatisfactory: performance that does not meet professional standards of quality.

*Consider for merit - allows for two levels of award.

CJP/ajf

cc: Vice President Powers

PRESIDENTS AND SUPERINTENDENTS

The awarding of FY88 salary funds appropriated by the Legislature is to be based on market and discretionary factors as follows:

Market

Various national and regional studies shall be used to provide mean target salaries by academic discipline and rank. Studies used include the Oklahoma, CUPA, National Engineering and AAUP.

Discretionary

To allocate and distribute at its discretion any funds allocated and appropriated for discretionary distribution purposes within the following guidelines:

a. Teaching abilities;
b. Research and scholarly activities;
c. Demonstrated performance of items a and b above;
d. Market adjustment considerations;
e. Experience in duties and responsibilities assigned;
f. Community and other public service;
g. Educational levels;
h. Addressing inequities

Please call my office with any comments in regard to the above.

William R. Marshall
Director of Financial Affairs
Board of Regents

Copies sent 5/1/87 V.P.'s Peterson & Powers, Mr. Tschetter

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APPENDIX Q
USD

The following agreement has been accepted for the 1987-88 academic year and is not to be considered binding in future negotiations.

The agreement includes:

1. Philosophical Statements for Salary Increases for 1987-88
2. Guidelines for Pool A -- Market for 1987-88
3. Guidelines Performance Pool for 1987-88

Stephen R. Metzner
President, USD COHE

Joseph M. McFadden
President, The University of South Dakota

PHILOSOPHICAL STATEMENTS FOR SALARY INCREASES FOR 1987-88

1. Low salaries for faculty remain one of the major concerns at The University of South Dakota.

2. We have accepted the University Planning Committee recommendation to identify regional average salaries by discipline (grouped disciplines where necessary) by rank as the guideline to establish University goals for salary increases. The University is committed to continued efforts to achieve the average salary by discipline (grouped disciplines where necessary) by rank in the identified region.

3. We intend to involve Chairs, Deans, and the Executive Council in the recommendation and decision making process.

4. We anticipate dividing the pool into two major segments: Pool A, to address market reality, which would be 70% of the dollars available; Pool B, is essentially performance dominated and shall be 30% of the dollars available.

5. In assessing performance we would utilize our promotion and tenure standards as they relate to statements regarding institutional expectations in teaching, research, and service.

6. In performance assessment we anticipate considering annual evaluations that have taken place since the Fall of 1984. If a person has not been here for the entire period of time the performance evaluations available will be used.

7. Faculty positions which cannot be paired with regional norms will be handled as equitably as possible.

8. Administrators below the rank of academic dean with faculty rank will be included.

GUIDELINES FOR POOL A -- MARKET FOR 1987-88

1. All people below the rank of Dean who hold faculty rank and are at least 50% time at the University are included in Pool A.

2. Because of problems with small populations the faculty were grouped by rank ( i.e., professor, associate professor, assistant professor, and instructor) as follows:

   Business

   Education

   Fine Arts

   Law

   Library

   Arts and Sciences
   - Group 1 Math Science plus Medical Support, Dental Hygiene, and Nursing
   - Group 2 Humanities
   - Group 3 Social Sciences

3. All salaries on a basis other than 9 months were converted to 9 months and any increase converted to the appropriate pay period.

4. With the market dollars available we were able to give each of the groups by rank approximately 2.1% of the difference between their average salary and the Oklahoma Study Region II average salary. In addition the University agrees to guarantee that no faculty member will receive less than $350. Increase by rank will not be less than:

   | | |
   |---|---|
   | Instructor | $350 |
   | Asst. Professor | 400 |
   | Assoc. Professor | 500 |
   | Professor | 600 |

5. The Oklahoma Study Region II data was used as the target average salary for each of the groups, except for the Library staff where the American Research Library salary data was used. Our average salary was then compared to this Oklahoma average before increases and after increases to determine the amount of movement made toward achieving parity.

6. A joint COHE and University Administrative Committee will be formed in the Fall to review the salary distribution by rank and discipline and make appropriate recommendations to the President by February 1, 1988.

GUIDELINES PERFORMANCE POOL FOR 1987-88

1. All persons on this list are eligible for performance funds. Performance fund awards will be made to no less than 30% of the total eligible and will not exceed 40%. Includes department chairs, etc.

2. Each person should have been evaluated for FY85, FY86, and FY87. Each year should have an evaluation for research, service, and teaching. If a person has been here for fewer than three years, the appropriate number of years should be used. Use terminology appropriate for each year.

3. A total evaluation for the three years should be made for each person in the areas of research, service, and teaching. The evaluation should use excellent, above average, average, below average, unacceptable.

4. A forced ranking of all persons should then be made from highest overall evaluation to the lowest overall evaluation. Include administrators in this forced ranking with faculty.

5. Example:

   a. Dale Evans

   b. Each year's evaluation:

| | Research | Service | Teaching |
|---|---|---|---|
| FY85 | Average | Excellent | Excellent |
| FY86 | Above Average | Average | Excellent |
| FY87 | Excellent | Excellent | Above Average |

   c. Total evaluation:

| Research | Service | Teaching |
|---|---|---|
| Above Average | Excellent | Excellent |

   d. Ranking in department:

      1) Dale Evans
      2) Roy Rogers
      3) Gene Autry
      4) Yogi Berra
      5) Billy Martin